

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA) CAUSE NO. 3:04-CR-240-P
(
vs.)
(OCTOBER 31, 2008
(DALLAS, TEXAS
HOLY LAND FOUNDATION, ET AL (9:00 A.M.

VOLUME 29 OF 37

STATEMENT OF FACTS

BEFORE THE HONORABLE JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE
and a jury

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1 THE COURT: Good morning.

2 Mr. Jonas, has the Government decided about your witness?

3 MR. JONAS: Yes, sir. We are not going to call the
4 witness. We are going to rest after Avi's testimony.

5 THE COURT: Okay. That was the only issue we had
6 outstanding as far as you are concerned?

7 MR. JONAS: As far as I am concerned, yes.

8 MR. DRATEL: I just want to hand up to the Court
9 what I was talking about yesterday with respect to the
10 document. One is from this year and the one from last year.

11 THE COURT: Tell me what this is.

12 MR. DRATEL: This was prepared by Major Lior and
13 provided by the Government as an inventory and index of where
14 these documents came from.

15 THE COURT: What is the issue?

16 MR. DRATEL: That it came from the Anwar library.

17 THE COURT: That is what you questioned the witness
18 about.

19 And have you had a chance to see this?

20 MR. JONAS: We are familiar with the document, Your
21 Honor. We are not prepared to stipulate to this. Major Lior
22 was on the stand and Mr. Dratel could have cross examined him
23 about the issue.

24 When he asked Avi about it, he said he wasn't sure why it
25 says on that document what it says, so I think he just has to

1 live with that answer. The U.S. government didn't prepare the
2 document.

3 MR. DRATEL: That is what they testified off of.
4 They were reading from his testimony last year and this year,
5 and I would recall him for that purpose, but I can't,
6 obviously, at this point.

7 THE COURT: I don't understand. What it is you are
8 asking me to do?

9 MR. DRATEL: Just to either admit that one line.
10 That is really it. Because they won't stipulate. Just admit
11 that one line.

12 THE COURT: And your position on that?

13 MR. JONAS: We object to that, Your Honor, because
14 there is no foundation for that line.

15 THE COURT: So who prepared these documents?

16 MR. JONAS: It came from Major Lior and his unit.

17 THE COURT: All right. I will take a look at this.

18 Any other issues we need to address, then, before we
19 begin?

20 You are up?

21 MS. MORENO: I am up still, Judge.

22 THE COURT: Let's see if we have everybody arriving.
23 We will be in recess. It looks like we have we are a few
24 jurors short.

25 (Brief recess.)

1 THE COURT: Ladies and gentlemen of the jury, good
2 morning. We are ready to proceed.

3 Ms. Moreno?

4 MS. MORENO: May it please the Court, Your Honor.
5 Thank you.

6 Q. (BY MS. MORENO) Good morning, sir.

7 A. Good morning.

8 Q. I think when we left off yesterday you were looking at
9 the indictment, and you were trying to find if you could see
10 anywhere in the indictment any mention of the Islamic Relief
11 Committee. Do you remember that?

12 A. I remember that.

13 Q. Okay. And would you like to continue looking through the
14 indictment to see if the Islamic Relief Committee appears
15 anywhere in there?

16 A. I didn't finish to review it, but if you want to show me
17 I will.

18 MS. MORENO: May I approach?

19 THE COURT: Yes.

20 Q. (BY MS. MORENO) And while you are looking there, if you
21 could also see if the Bethlehem Orphans Care Society appears
22 anywhere in there as well. And what I have done for you, the
23 little yellow stickies, that is where all the counts of the
24 indictment and the different committees are, so you can look
25 to those pages where the committees are listed.

1 A. Okay. Thank you.

2 MS. SHAPIRO: Your Honor, to save time, we are
3 perfectly happy to stipulate to Ms. Moreno's question.

4 MS. MORENO: And the stipulation would be the
5 Islamic Relief Committee and the Bethlehem Orphans Care
6 Society appear nowhere in the indictment.

7 THE COURT: Are you prepared to agree to that.

8 MS. SHAPIRO: Yes.

9 THE COURT: Members of the jury, I explained to you
10 before, you can accept that as a fact, then, without any
11 further evidence.

12 Ms. Moreno?

13 Q. (BY MS. MORENO) Now, when you were testifying about the
14 secretive nature of Hamas within the zakat committees over the
15 last day or so, do you remember that? In general, when you
16 were talking about the zakat committees and how only the local
17 community knew that they were Hamas.

18 A. Right. I am not sure it is accurate. I said that the
19 secrecy goes as far as for those who they don't want to be
20 targeted by; countries like Israel, like the United States or
21 European countries that consider Hamas as a terror
22 organization. I didn't talk about the Palestinian community
23 or Muslim community around the world. So I just want to
24 differentiate when I say secrecy.

25 Q. Okay. I understood your testimony, and correct me if I

1 am wrong, I understood your testimony to be that in the
2 Palestinian community, in the community in the West Bank, that
3 those people know, they know who the zakat committee charities
4 are controlled by Hamas. Didn't you say that?

5 A. I said that the fact that these committees were
6 controlled by Hamas is a common knowledge. That is what I
7 said.

8 Q. Common knowledge in the Palestinian community in the West
9 Bank?

10 A. Yes, that is what --

11 Q. Right?

12 A. Yes.

13 Q. And this is the Palestinian community you admitted to Mr.
14 Dratel you never conducted a poll on. Correct? You have
15 never polled the Palestinian community in the West Bank, sir,
16 have you in your research?

17 A. I never polled. That is correct.

18 Q. You understand what I mean by polling?

19 A. By polling you are talking about one of the methods that
20 you can measure whether the community knows or doesn't know
21 about this.

22 Q. Right.

23 A. Correct.

24 Q. You have never done that?

25 A. Polling, I didn't do.

1 Q. Okay. And I think you also said when you were testifying
2 about the West Bank and the charities, I think you said that
3 they don't acknowledge the names of the charities; although
4 they say they have a charity network, they don't reveal the
5 names, the Hamas leaders, or Hamas itself, the organization,
6 they don't give names. Do you remember testifying to that
7 about a day or two ago?

8 A. They are not acknowledging in public. That is what I
9 said.

10 Q. Okay. But all of these zakat committees and charities,
11 they actually operate out in the open. Right?

12 A. They act in the open.

13 Q. They have addresses that are out in the open. Correct?

14 A. They have addresses. Correct.

15 Q. Okay. In fact --

16 MS. MORENO: If I could have the elmo, sir.

17 Q. (BY MS. MORENO) And I am showing you what has been
18 marked as InfoComSearch No. 59. And I think Ms. Shapiro
19 showed you this. This is one of the letters that was written
20 to CBS. And this was written from the Islamic Science and
21 Culture Committee of Jerusalem. Do you remember talking about
22 that?

23 A. Correct.

24 Q. And if you look at the bottom here, it has got Jerusalem
25 and it has got phone numbers and fax numbers. Correct?

1 A. Correct.

2 Q. Okay. And then she showed you InfoCom Search No. 64,
3 which I will show you No. 64, which is the letter from the
4 Nablus zakat committee. Correct?

5 A. Correct.

6 Q. And she didn't -- I think she referred to the first page.
7 Do you remember that in the testimony?

8 A. I think I saw this page.

9 Q. You saw that page. Right?

10 A. Correct.

11 Q. But she didn't talk about the second page. Let's talk
12 about the second page. And I will read it. It is from the
13 Nablus zakat committee to CBS. And it says, "We have learned
14 that your report on October 3rd has accused the Holy Land
15 Foundation of diverting money to terrorists. If you think
16 that providing medicine, education, food and clothes to the
17 needy people of the Holy Land is wrong, please tell us what is
18 the right thing to do." That is what it says. Right?

19 A. That is what it said. Right.

20 Q. Nablus zakat committee is asking CBS --

21 A. Correct.

22 Q. -- what is the right thing to do.

23 A. That is what is written on the letter. Correct.

24 Q. And then it says, "We trust the Holy Land Foundation and
25 we know where the money goes. It goes to keep the Palestinian

1 people alive." Right?

2 A. Correct.

3 Q. "Please stop your propaganda and correct your
4 mistake." Correct?

5 A. That is what is written.

6 Q. That is what is written. Now, on the next page it has
7 what I believe is a copy of the envelope. And in case someone
8 did not know where to go to the Nablus zakat committee, let's
9 take a look at the address. It says al-Shantir Building,
10 Sifyan Street. Do you see that at the bottom?

11 A. I can see that.

12 Q. And it actually gives you directions so if you are on
13 Sifyan Street and want to go to the Nablus committee, it says
14 "behind the green market." It even tells you directions.
15 "Behind the green market." That is what it says. Right?

16 A. Correct.

17 Q. But you didn't go to any of the zakat committees in your
18 research, I recall. Is that right? You have never been to a
19 zakat committee, sir?

20 A. You asked me if during the time period when the
21 Palestinian Authority controlled the city whether I got into
22 there and visited. The answer is no.

23 Q. Let's talk about -- I think you said -- I want to talk to
24 you a little bit about control of the zakat committees. Okay?
25 And I think you said it is in three stages, and the first

1 stage was just after Hamas was formed. That is what you said.

2 Right?

3 A. Correct.

4 Q. I think you said they had a presence in 1988, according
5 to you, and then you said in 1991, according to your
6 research --

7 A. Correct.

8 Q. -- most of the committees were in the point, your words,
9 of no return.

10 A. Correct.

11 Q. Right? And then you said -- You asked how did these
12 people get into the committees, and you said in a variety of
13 ways. And you said, sometimes the people were already there
14 from the Muslim Brotherhood. You remember that?

15 A. They were.

16 Q. Already there?

17 A. Already there. Correct.

18 Q. Right? And this -- When you mean already there, you are
19 talking about zakat committees that were formed in the '70s
20 and the '80s and before Hamas was formed. Correct, sir?

21 A. Correct.

22 Q. Okay. And then you said that sometimes they were
23 elected.

24 A. Correct.

25 Q. Okay. Let's talk a little bit about that. I also -- You

1 have also said that -- I think you testified that you do not
2 know who all of the members of the zakat committees were at
3 any one period of time. Correct?

4 A. I am not sure that that is accurate.

5 Q. Okay. I am going to be very specific in my question.

6 A. Okay.

7 Q. Do you know who all of the members of the zakat
8 committees were for any committee during the relevant time
9 period between 1995 and 2001, all of the members of the
10 committee? Can you recite them now?

11 A. Actually I do have the documents. I reviewed the
12 documents of the zakat committees with all the members. This
13 is from documents that were seized by the Israeli army, and I
14 didn't put every one there in my review, my summary. There
15 was a reason. Sometimes I didn't put even Hamas activists,
16 but I knew how many members. I reviewed and I decided to put
17 specific members that were, according to my opinion, were
18 dominant leaders.

19 Q. Okay. Are you finished?

20 Now, this document that you say that you reviewed that
21 was seized by the Israeli Defense Forces, what document is
22 that?

23 A. For example, I am talking about documents that announce
24 the results of the elections that were made for the Islamic
25 Charitable Society in Hebron. For example, I am talking about

1 inspections that were made in 1992 by the Civil Administration
2 that gave all the names of the zakat committee members.

3 Q. Are you finished?

4 A. There are more documents that I reviewed that I knew who
5 were the members in Qalqilya. I knew who were the members.
6 And by the way, between 1995 and 2001, there were respectively
7 minor changes comparing to what happened before that. Between
8 1990 and 1995 there were more changes. Between 1995 there
9 were more minor changes.

10 Q. Okay.

11 A. Okay. So I knew -- I had a very good picture, quite
12 accurate, because I reviewed -- Okay.

13 Q. Okay. So you have said that there were some minor
14 changes, and that you have reviewed these documents that told
15 you about election results. That is one thing you just
16 mentioned. Correct?

17 A. There were not actually elections in every committee.

18 Q. Okay.

19 A. Some committees there were elections.

20 Q. Are those documents in evidence in this case that the
21 jury can look at?

22 A. These documents I think part --

23 MS. SHAPIRO: Objection, Your Honor. I object to
24 the question because it is going to discovery issues.

25 THE COURT: She may ask if they are in evidence. Go

1 ahead.

2 Q. (BY MS. MORENO) Are the documents you say you have
3 reviewed that informed of you of election results, are they in
4 evidence in this case?

5 A. I will lead you to the paper that I gave the Government
6 and they gave to you, I assume, because you presented it to
7 me, and this is the inspection that was done in 1992 by the
8 Civil Administration with all the names of the people that
9 were there. Also in the binders that I gave to the -- The
10 binders that I gave to the Prosecution, there were several
11 documents that expose the election of all the board members.
12 You have this in your possession. Whether it is evidence or
13 not --

14 Q. So you say I have it in my possession?

15 A. No, I am relying on these documents.

16 Q. Okay. All right. You are relying on those documents
17 that you say is in this summary?

18 A. There are more documents. I am just giving you little
19 examples. There are more than that. They are, for example,
20 prosecution cases that I reviewed, and then I saw who were the
21 members in several points of time, several -- I had a quite
22 accurate picture of what was going on and who was the members
23 in each specific time, in the time frame that you are pointing
24 out, and before that and after that.

25 Q. So you say, sir.

1 Let's talk about elections in zakat committees. Okay?

2 Let's talk about the majority vote. Now, these elections in
3 the zakat committees, how were they conducted?

4 A. They were conducted -- It depends on what committee we
5 are talking about.

6 Q. Let's say Nablus.

7 A. Nablus, there were some kind of a council that elected
8 the members.

9 Q. And what would have been the council during the relevant
10 period of time?

11 A. You are asking me the affiliation of the council?

12 Q. I am sorry?

13 A. What would be the council?

14 Q. Yeah. When you say council, what do you mean by council?

15 A. A gathering of members. Not all the cities. It is not
16 election for the mayor.

17 Q. I am talking about the zakat committees.

18 A. I know.

19 Q. I am not talking about public elections.

20 A. In each committee there was a different way, and --

21 Q. So tell me the different way between the Jenin zakat
22 committee and the Nablus zakat committee.

23 A. Actually in Jenin zakat committee in the time frame that
24 you are talking, there was not election.

25 Q. There was no election?

1 A. There was no election.

2 Q. Because you didn't find any information about an
3 election, so you have concluded there was no election?

4 A. There was no election in this period of time. They were
5 approved, the members that were in 1988, 1989, 1990, and 1991,
6 after the same board was approved when the Palestinian
7 Authority went in the territory.

8 Q. Let me ask you this.

9 A. In Tulkarem, for example, there were elections.

10 Q. Okay. Let's take Tulkarem.

11 A. Let's take Tulkarem.

12 Q. All right. In the Tulkarem zakat committee election,
13 does the president of the zakat committee, does his vote count
14 more than the others?

15 A. Does his vote --

16 Q. Does his vote count more than the others?

17 A. You are asking me questions how they count the position,
18 the key position in the members. This is something different.
19 If you are talking to me about the election to the board
20 members, this is one thing. If you are talking to me about
21 appointing persons to specific positions, this is something
22 else. If you want to focus me, talk to me about --

23 Q. I am going to focus you right now. Okay?

24 A. All right.

25 Q. In the committee when they are voting, when the committee

1 is voting on let's say a grants project. All right? Does the
2 president --

3 A. On project.

4 Q. On a project, where to send money. Does the president's
5 vote count more than the other members of the board?

6 A. Actually in that case I cannot give you an accurate
7 answer and why, because there was -- The chairman, for
8 example, and the treasurer and those who were signatory, had a
9 lot of power that was given by the council by the members.

10 Q. I understand what you are saying.

11 A. Just a second. And sometimes they can conduct projects
12 without the authorization of the board member. Sometimes the
13 board members was actually not even meeting. They were not
14 meeting at all.

15 Q. Sometimes they didn't meet at all?

16 A. At all.

17 Q. Uh-huh. And the evidence that you rely on to testify to
18 this jury about that is what? Where do you see that evidence?

19 A. I see this evidence for inspections that were conducted
20 by the administration. I see --

21 Q. When you say the civil administration --

22 A. I didn't finish. You asked me something.

23 Q. I want to be clear. When you say civil administration --

24 THE COURT: Counsel, you cut him off in the middle.

25 You can ask him when he finishes. Don't interrupt. Go ahead.

1 Q. (BY MS. MORENO) You may complete your answer.

2 A. Also a document of the PA, the Palestinian Authority,
3 talking about how things are going on in these committees,
4 criticism of how the things are running, inspections that were
5 made by the waqf, for example, in Jenin, how they take the
6 decisions, and also in the investigations, in prosecution
7 files actually, I was going to prosecution files, and board
8 members for example that say no one consulted them. They were
9 not part of making the decision, because the chairman, for
10 example, had a powerful -- he was very significant.

11 If you want to take examples, in Nablus, for example,
12 Adly Ayyash, Hamed Bitawi, and Abdel Halim Hanabili were
13 making decisions. Actually Hanabili sometimes took decision
14 by himself. In Tulkarem, for example, Khamis took the
15 decision by himself.

16 By the way, some of the members complained and even left
17 the committee because they felt that they didn't participate.

18 So what I am saying is that what is written in the bylaws
19 not necessarily happened in the committee itself. It is all a
20 matter of practicing and the reading material from within the
21 committees. That is what I am saying.

22 Q. So my question about how the decision-making process is
23 in the zakat committee, whether the president's vote counts
24 more, you can't tell me.

25 A. No, I can.

1 Q. I thought you said you could not tell me.

2 A. No, I can. What I said and just demonstrate now is that
3 the chairman's decision and opinion, no matter -- It is not an
4 issue of democracy and counting the votes. His fellows, board
5 member was counting more than others, meaning that, for
6 example, the treasurer, the chairman, the vice chairman, and
7 the secretary had a lot of power in their hands.

8 Q. And would that be true for you, say, for all the zakat
9 committees?

10 A. I said that it is different from committee to committee.
11 But in general it is correct that the chairman and the
12 treasurer had a lot of power in each committee, no matter what
13 was the base of law that they conducted.

14 Q. So let me ask you this.

15 A. The regulation. I think the word is regulation. No
16 matter the fact that they didn't go strictly by the regulation
17 that they created by the waqh, it speaks for itself.

18 Q. It speaks for itself?

19 A. Yes. They had regulations --

20 Q. Let me ask you this. In the Tulkarem zakat committee
21 board, how many votes were necessary to vote somebody in?

22 A. Somebody to the board?

23 Q. Yeah. How many votes were necessary?

24 A. In Tulkarem committee I had the fact who was elected. It
25 is not -- For me it is not important to know who vote him and

1 why. I just saw the results and the results are important.

2 Q. You saw the results and you then derived at your opinion
3 from the results. Is that fair?

4 A. Yeah, it is fair to say that I saw the results and I saw
5 who was elected, who is running the committee. That is the
6 important issue.

7 Q. All right. Let me move on.

8 Now, you are familiar with the list, what we call the
9 list put out by the Treasury Department that talks about
10 specially designated foreign terrorist organizations, and, in
11 fact, this is what Hamas falls under in American law? You are
12 familiar with that? Yes?

13 A. I reviewed this list. I reviewed some of the lists, yes.

14 MS. MORENO: May I approach, Your Honor?

15 THE COURT: Yes.

16 Q. (BY MS. MORENO) Showing you what is in evidence in this
17 case, Defense Exhibit No. 963, that is a copy of the list that
18 is in evidence. Okay? You have seen that list before, sir.
19 Correct?

20 A. I have seen some of it. Not all of it, but of course if
21 you want me to find something --

22 Q. We are going to go through that in a minute.

23 A. If it is there, of course.

24 Q. Of course. And that list ends, and you can see it on the
25 front page, it ends on June 29th, 2001. It is on the very top

1 of the front page. Do you see that? It ends June 29th, it is
2 dated, 2001.

3 A. Okay. I can see that, yes.

4 Q. Okay. And the last financial transaction in the
5 indictment in this case, sir, is June 14th, 2001. Take my
6 word for it. Okay?

7 A. Okay.

8 Q. Now, this is the Demonstrative No. 35 that Ms. Shapiro
9 showed you. Remember that?

10 A. Correct.

11 Q. And she wrote the zakat committees with your help in this
12 particular area. Do you recall that?

13 A. Correct, yes.

14 Q. And she circled Hamas designated. Right?

15 A. Correct.

16 Q. Because Hamas is specially designated under the law.
17 Correct?

18 A. Correct.

19 Q. Now, I want you to go to the list and see if you can find
20 if the Jenin zakat committee is specially designated in that
21 list.

22 A. I will save the time of the jury and the Court. I know
23 that they are not appeared --

24 Q. Let me take you through it. Let's not rush.

25 A. I know that they are not there.

1 Q. So Jenin is not. Correct?

2 A. Correct.

3 Q. We can go through this.

4 And Nablus is not. Correct?

5 A. Correct.

6 Q. Specially designated.

7 Nor is Tulkarem. Correct?

8 A. Correct.

9 Q. Nor Qalqilya?

10 A. Correct.

11 Q. Ramallah?

12 A. Correct.

13 Q. Islamic Science and Culture?

14 A. Correct.

15 Q. Now the Bethlehem Orphan Care, we now know it is not even
16 in the indictment. Correct? It is not even mentioned in the
17 indictment?

18 A. According to what was --

19 Q. The stipulation, you were listening. Right?

20 A. Okay.

21 Q. Okay. But that is not specially designated either, is
22 it, sir?

23 A. What do you mean?

24 Q. The Bethlehem Orphan Care Society is not specially
25 designated.

1 A. I agree. Correct.

2 Q. And neither is -- The Islamic Charitable Society of
3 Hebron is not specially designated under the law. Correct?

4 A. Correct.

5 MS. MORENO: Your Honor, I move this exhibit as next
6 in line. It would be Defense exhibit -- and because Ms.
7 Hardman is not here, I am going to safely say Defense Exhibit
8 No. 1425.

9 THE COURT: Counsel, any objection?

10 MS. SHAPIRO: No objection, Your Honor.

11 THE COURT: Admitted.

12 MS. SHAPIRO: As a demonstrative, of course.

13 THE COURT: No. 1425, are you offering that as a
14 demonstrative.

15 MS. MORENO: Yes, Your Honor.

16 THE COURT: That is admitted as a demonstrative
17 exhibit.

18 Q. (BY MS. MORENO) Finally, sir, just to orient the jury
19 again, the Defense does not know your real name. Correct?

20 THE COURT: Counsel, we have been through that
21 yesterday. We don't need to go over that again.

22 MS. MORENO: All right. That is fine. Thank you,
23 Your Honor.

24 Pass the witness.

25 THE COURT: Ms. Shapiro?

1 MS. SHAPIRO: May we approach just briefly, Your
2 Honor?

3 THE COURT: Yes.

4 (The following was had outside the hearing of the
5 jury.)

6 MS. SHAPIRO: There are two issues I wanted to bring
7 out on redirect that I just wanted to run by the Court first.

8 One is that Defense counsel brought out that Avi is
9 testifying under an assumed name, and there has been a
10 stipulation in the case that we had agreed that the Court
11 would tell the jury that he was testifying under an assumed
12 name because Israeli law requires it. Because of the emphasis
13 that the Defense put on that, I feel compelled to ask why is
14 that, and bring out that it is for security reasons. That is
15 issue No. 1.

16 Issue No. 2 is Mr. Dratel asked a lot about the kinds of
17 materials and was trying to make the point that they don't
18 have access to anything because they can't research him, and I
19 want to bring out the volume of material that was provided to
20 the Defense in this case. So those two issues I wanted to
21 front before I actually asked them.

22 THE COURT: How are you going to bring out the
23 volume of material through this witness?

24 MS. SHAPIRO: Just ask him if he provided to the
25 Government to turn over to the Defense material that pertained

1 to the pieces of his opinion.

2 MS. HOLLANDER: If we can take the second one first,
3 the volume of material, I can do it now--I was going to do it
4 before my redirect--move the Court again for letters rogatory
5 to review the documents, and also remind the Court--I have to
6 do this somewhat vaguely--about a funding request and the
7 Fifth Circuit's response to that funding request that if
8 something came up in trial that made it necessary for us to
9 have an expert, that would be reconsidered. I can remind you
10 in detail of that later.

11 But that issue has come up now, and we have been severely
12 prejudiced by our inability to go and research these issues.
13 Finally, while -- just after he said that he turned over --
14 They did. They turned over 21 volumes of information.
15 However, we translated them all, at tremendous cost, and I
16 have just searched them for the word election, and it appears
17 nowhere. And it is 21 volumes, but the Adobe search is pretty
18 good because it found other places, it just didn't find
19 elections of the zakat committee. I have read them all. I
20 don't remember reading anything.

21 So I don't believe that he ever turned over to -- the
22 Prosecution ever turned over to us any of these documents that
23 he is talking about, about elections or numbers of people in
24 the zakat committees, because that was something I was
25 particularly looking at.

1 MS. SHAPIRO: That is in his 3500 material.

2 MS. HOLLANDER: Mr. Dratel has read his 3500
3 material.

4 MR. DRATEL: The inspections that he is talking
5 about, you should read them, because there is nothing in there
6 about what he is talking, nothing. As a matter of fact, there
7 are only two committees in the indictment that are in that
8 material.

9 THE COURT: In the 3500 material?

10 MR. DRATEL: Inspections by the Israelis that he
11 talking about. I went through with him yesterday the
12 committees that are in the indictment that are in the
13 documents are Jenin, Tulkarem, I went through with him --
14 There is a list of -- There is no list of the Jenin committee.

15 MS. SHAPIRO: Did you read his book?

16 MR. DRATEL: This is not the inspection documents
17 and it is not primary documents. He is talking about
18 documents he was supposed to get, not a summary of. I can't
19 cross examine his summary.

20 MS. HOLLANDER: We just don't have the documents
21 that he is referring to.

22 THE COURT: I am not sure that you don't. We will
23 have to resolve that issue. You think they do or do not?

24 MS. SHAPIRO: I would say a couple of things. The
25 3500 material with respect to the reports, that is somewhat of

1 a misnomer. He didn't write them. They were official
2 reports. We have been turning over far, and we did turn over
3 far in excess of what is required to be turned over. We
4 turned over I guess it is 21 binders, because there was a
5 19-A, B, and C of material that we received pursuant to MLAT
6 requests. We turned it over wholesale to the Defense years
7 ago, and that is what Ms. Hollander is referring to. We also
8 turned over these reports that we just got, even though they
9 are not 3500 material.

10 So because of the conditions under which he is
11 testifying, we have been extremely forthcoming about what has
12 been turned over. This witness has written basically a sort
13 of book, not a book that can be published in the marketplace
14 because he is not allowed to publish, but it is probably 300
15 pages, a bound book that is essentially the pieces of his
16 opinion. And obviously everything that he has reviewed in his
17 entire career on the subject--this is what he does every
18 day--can't be turned over, and that is not required to be
19 turned over. What is in this book is in essence like an
20 expert report. And there is plenty in there on which they can
21 cross examine. And I don't think any expert, and I don't
22 think that Mr. Benthall will be turning over everything he has
23 ever relied on ever in forming his opinion. That is just not
24 something that experts do.

25 MS. HOLLANDER: Your Honor, I think we are talking

1 across purposes here. The Government did turn over 21 binders
2 of material, and I have read it, every bit of it at one time
3 or another. But the quantity doesn't change what is missing.
4 What is missing is what he just said.

5 THE COURT: Maybe; maybe not. I don't know that is
6 missing. You don't have it. You can bring that out.

7 MS. SHAPIRO: It can be in his book. Even though
8 it is a summary, it is there.

9 THE COURT: I don't want to spend anymore time on it
10 because I don't want to keep this jury waiting. You can go
11 into the security in terms of why, because you all have
12 brought that out. They have opened the door.

13 And as far as the documents, don't go into that just yet.
14 I think we need to maybe resolve this other issue. I know
15 they have been making some other issues, and this isn't the
16 first time. They have been doing it throughout the trial,
17 what they have access to and not have access to. So we will
18 just have to resolve that at some point. And you can go back
19 into it if you need to, but for now we will stay away.

20 MS. HOLLANDER: At the appropriate time ex parte I
21 can explain the other thing about the funding, if Your Honor
22 doesn't remember.

23 THE COURT: You can do that.

24 (The following was had in the presence and hearing
25 of the jury.)

REDIRECT EXAMINATION

By Ms. Shapiro:

Q. Good morning.

A. Good morning.

Q. I wanted to ask you a few questions to follow up on some of the things that Defense counsel asked you.

Now, Mr. Dratel pointed out yesterday that you are not testifying under your real name. Do you recall that?

A. Correct.

Q. Okay. Why is that?

A. It is a law the ISA law in Israel forbids for exposing name of Israeli Security Agency employees because of security reasons, and after a few cases where ISA or Israeli Security Agency were killed during -- or were threatened because of their duty.

Q. Do you remember we saw yesterday--and I am not going to play it again--or it may have been a couple of days ago we saw it of a videotape it that was exhibited as Nablus No. 6, and it was a videotape from the Nablus zakat committee, and it showed somebody with a gun just sort of reciting a speech about a kidnapping. Do you recall that?

A. I remember, yes.

Q. Do you remember what the subject matter pertained to in that video, what the man with the gun was talking about?

A. The plan was to kidnap or kill Israeli Security Agency

1 officer.

2 Q. And the Israeli Security --

3 MR. DRATEL: Your Honor, I object; 403 and
4 *al-Moayad*.

5 THE COURT: Overruled.

6 Q. (BY MS. SHAPIRO) Is the Israeli Security Agency the
7 agency you work for?

8 A. Correct.

9 Q. Now, Mr. Dratel also asked you about your practical
10 experience and your practical experience versus your sort of
11 research. In other words, he asked you about books that you
12 have read and internet sites that you looked at, and he asked
13 you specifically about whether internet sites are the kinds of
14 things that you rely on in your research. Do you remember
15 that?

16 A. I remember.

17 Q. Do you rely on just internet sites?

18 A. Of course not.

19 Q. What other kinds of THINGS do you rely on?

20 A. As I said in the direct examination, I rely on a variety
21 of sources, and this includes books, articles, court cases,
22 prosecution cases.

23 MR. DRATEL: Objection, Your Honor; *Crawford*,
24 confrontation.

25 THE COURT: Overruled.

1 THE WITNESS: Television sites, speaking with
2 people, consulting with other academic or experts in a variety
3 of fields.

4 Q. (BY MS. SHAPIRO) And in terms of your practical
5 experience, do you study the Hamas social wing as a living
6 every day?

7 A. It is a daily work. It is a daily work. Of course there
8 can be one day that I cannot approach it, but it must be a
9 daily work to be updated all the time, because there is a lot
10 going on in this field.

11 Q. And is it important to the mission of your agency for
12 your work to be accurate?

13 A. This is important, and it is part of preventing
14 terrorism. This is the ISA definition to prevent terrorism.

15 Q. And Mr. Dratel also pointed you to a number of documents
16 yesterday, and he pointed out that some of these documents
17 postdated 2001. Do you recall that?

18 A. What exactly document?

19 Q. I think he pointed you to some of the posters from the
20 Islamic Charitable Society of Hebron of suicide bombers and
21 other martyrs who had died in 2002, 2003.

22 A. Okay, yes.

23 Q. 2004?

24 A. Yes, I remember, yes.

25 Q. Is information that postdates 2001 relevant to your

1 analysis about these committees?

2 A. Yes, but I have to elaborate.

3 Q. Please.

4 A. I was also asked yesterday about inspections that were
5 made back in the '90s.

6 MR. DRATEL: Your Honor, non-responsive.

7 THE COURT: Overruled. Go ahead.

8 THE WITNESS: At that time, and I was not allowed to
9 say it yesterday, but in the same inspection of the zakat
10 committee in Tulkarem, Nablus, and other places, the Islamic
11 Sciences, in institutions like in mosques, there were seized a
12 lot of material like posters of Hamas, Izz el-Din al-Qassam,
13 leaflets of Hamas, books of Hamas, and when I took it back to
14 the early '90s, 1993, for example, and findings or items that
15 were found even in 2004 and 2005, and I am looking on the time
16 period, this is very significant. It is very indicative.

17 I am not saying this is the only criteria, but if
18 speaking on the specific criteria, I think that if you find
19 for a long period of time similar items, it says something.
20 And it said that in this period of time these committees were
21 controlled by Hamas. Items that were found in mosques in
22 Tulkarem, in mosques of the Mujama'a al-Islami, which is the
23 Islamic Center, even ammunition that was found there in one of
24 the mosques of the Mujama'a al-Islami, this is the kind of
25 material that helped me, of course, not solely, but helped me

1 to make my opinion.

2 Q. Okay. You are jumping a little ahead, but I want to go
3 back to that answer which is important. But let me ask you,
4 in addition, those documents that come after 2001, how are
5 they relevant to your analysis?

6 A. They are very relevant. Again, it is not that one day
7 these offices started to have Hamas material. It wasn't
8 created in one day. And when I see posters or videos that
9 were seized before 2001 even, or were there, a video described
10 before 2001 and after, I see the continuous -- For me it is
11 one line, it is a timeline, a time frame. And it doesn't stop
12 where the indictment or when the specific foundation was--I
13 don't know if I am allowed to say this--was designated. In
14 2001 there was a designation. I don't know --

15 MS. HOLLANDER: Objection, Your Honor.

16 MS. MORENO: May we approach?

17 THE COURT: No. Go ahead.

18 Q. (BY MS. SHAPIRO) Don't tell me what designation you are
19 talking about. Okay? Because it is not important here. What
20 we are talking about --

21 A. I am asked about 2001. 2001, for me what happened before
22 2001 and after 2001, it doesn't -- Nothing happened in that
23 sense.

24 Q. Okay. There was no change?

25 A. There is no change. What was before 2001 was after 2001.

1 Q. Okay. Now, going back to the issue of the mosques. Mr.
2 Dratel asked you about whether there were Hamas items found in
3 the offices of certain committees like Tulkarem, and you
4 started to say there were things found in the mosques, and
5 then he cut you off because he wanted to know only what was
6 found in the office. Do you remember that?

7 A. Yes.

8 Q. Okay. And you just testified now that there were in fact
9 Hamas materials that were found in the mosques.

10 A. Correct.

11 Q. Why is it that things were found in the mosques but not
12 in the office, in your opinion?

13 MR. DRATEL: Objection, Your Honor. He wasn't a
14 part of that inspection.

15 THE COURT: Overruled. He may state an opinion. Go
16 ahead.

17 THE WITNESS: I want to go back to this report of
18 Tulkarem.

19 Q. (BY MS. SHAPIRO) I only ask that you not read from it.

20 A. I am not reading.

21 Q. Okay.

22 A. I am not reading --

23 Q. You can refresh your memory. That is fine. It is just
24 the rules of evidence.

25 A. I understand. Okay. Zeid mosque was one of the mosques

1 of -- is one and still one of the mosques of Tulkarem. In an
2 inspection that were carried out in 1993, there were Hamas
3 items that were found. Nine years after that, the same mosque
4 also Hamas items were found.

5 If you remember, you presented me yesterday a leaflet of
6 Hamas taking responsibility for the suicide attack in
7 Passover, the Park Hotel. It is the same mosque. I am
8 talking about 1993 and 2002. This is -- For me it is
9 part -- It is also important if I make my opinion to see that
10 a mosque institute that supported or is a part of the zakat
11 committee, and the same imam at that time is also in the waqh,
12 everything is linked here. And the time frame -- during all
13 this time frame that I am talking about.

14 Now, it wasn't only on Tulkarem, it was also on Nablus,
15 it was also in the Islamic Sciences and Culture, it was also
16 in the Mujama'a Islami, the Islamic Center and Islamic
17 Society.

18 Q. So these materials you said were found in 1993. Is that
19 right?

20 A. The material that were found in 1993 and the material
21 were brought to court. I reviewed prosecution cases.

22 MR. DRATEL: Objection again, Your Honor.

23 THE COURT: Overruled.

24 Q. (BY MS. SHAPIRO) Who was in control of the West Bank in
25 1993?

1 A. Israel.

2 Q. Okay. So when Israel found these materials, why didn't
3 Israel close down these mosques and these committees?

4 A. It is complicated, and I will try to answer as simple as
5 I can. First of all, as I said, I don't think at that time
6 even that Israel perceived the real danger, even though in
7 1993 it started to perceive what is the big threat, how big is
8 the threat, and that is why these actions were taken against
9 institutes of the zakat. It started action in 1992 and 1993.

10 Q. What was happening --

11 A. Israel government, Civil Administration, according to the
12 documents I review, and part of them are here, decided not to
13 shut down mosques. But if there was someone who brought
14 material, to take action against a specific person. The emam,
15 if it was an emam, that took Hamas items into the mosques, not
16 to shut down the mosque because the mosque is serving people.
17 That was the first attitude. And I am not judging it if it is
18 good or bad. This is the fact.

19 Q. What was the policy of Israel toward religious
20 institutions of the Palestinians at that time?

21 A. Israel's attitude, the Israeli government attitude was to
22 leave the religious affairs in the hands of the Jordanian
23 waqh. And after that it was, of course, handed to the
24 Palestinian Authority, and in many areas not to interfere with
25 the religious affairs of the Palestinians.

1 Q. Okay. Now, Mr. Dratel also pointed you to a couple of
2 documents, and he pointed out that you spoke about Operation
3 Defensive Shield, but yet there were documents seized from the
4 committees at a time period later than Operation Defensive
5 Shield. Do you remember that?

6 A. I remember.

7 Q. Okay. Were there operations after Defensive Shield that
8 collected -- where the Israeli army collected items from these
9 committees?

10 A. Yes.

11 Q. And the documents that were presented to you during your
12 direct examination, did it come from a variety of these
13 operations?

14 A. Correct.

15 Q. Okay. Now, Mr. Dratel asked you about Interpal. Do you
16 recall that? One of the organizations that was on your
17 PowerPoint map as being an external funding source for the
18 committees.

19 A. I remember. Correct.

20 Q. Okay. And he talked to you about the British Charity
21 Commission. Do you remember that?

22 A. I remember. Correct.

23 MS. SHAPIRO: Okay. And I want to pull up
24 designation No. 1, please. Could we go to the next page?

25 Q. (BY MS. SHAPIRO) What you are seeing is a certified

1 document from the Department of Treasury.

2 MS. SHAPIRO: If we could go to page 3, please.

3 Q. (BY MS. SHAPIRO) What does No. 3 say on this list? Can
4 you read that?

5 A. No. 3, palestinian Relief and Development Fund, a.k.a.
6 Interpal.

7 Q. Okay. Is this the same Interpal we were talking about?

8 A. Yes.

9 Q. And are you aware that Interpal in the United States,
10 under United States law, is a designated organization?

11 A. Yes.

12 Q. Now, Mr. Dratel also questioned you about a 1995
13 newspaper article in an Arabic publication called al-Wasat.
14 Do you remember that?

15 A. Yes.

16 Q. And in that article it described that the Palestinian
17 Authority needed to gain control over the zakat committees.
18 Do you remember that?

19 A. Correct.

20 Q. Okay. Was the Palestinian Authority successful in
21 gaining control over the committees?

22 A. No, even though there were efforts in a certain period of
23 time to do this, but in the overall they were not successful.

24 Q. Did Hamas retain their control of these committees for
25 the entire period between 1995 and 2001?

1 A. In the same article--you are referring to an article, and
2 I couldn't say that--that Hamas in the same article was -- In
3 a different article that relates to this article, when Yasser
4 Arafat in a newspaper called al-Sabil August 23rd, 1994 said
5 that the Palestinian Authority should embrace or take over
6 those committees.

7 Q. And were they successful?

8 A. The answer was no. And Hamas in the same article
9 al-Sabil, which is a Jordanian newspaper, said it threatened
10 Yasser Arafat not to touch those committees.

11 Q. And how does that play into your analysis of the
12 committees?

13 A. The fact that the Palestinian Authority had an interest
14 but couldn't -- they couldn't execute or they couldn't
15 translate this interest into action, I would say there they
16 were stopped, blocked by Hamas each time they wanted to do
17 something against these committees.

18 And we have to remember at that time, 1995, the Hamas is
19 a very substantial presence in the Palestinian population, and
20 that is what this threat of Hamas over the PA only increased
21 until 2007.

22 Q. So just going back to my earlier question, did Hamas
23 retain control over these committees between 1995 and 2001?

24 A. Yes.

25 Q. Now, Ms. Hollander asked you about Jamil Hamami. Do you

1 remember that?

2 A. Yes.

3 Q. And you had said that Jamil Hamami had a rift with Hamas,
4 but that in your opinion today he is Hamas. Do you remember
5 that?

6 A. This is my opinion.

7 Q. Okay. Do you know whether that rift between Jamil Hamami
8 and Hamas was still going on in 1999?

9 A. I think -- No, I don't think. Yes, the change came in
10 the second Intifada. The second Intifada started in 2000 and
11 2001. This is where the change where actually Jamil Hamami
12 just went -- The rift was, how you say -- I don't know what
13 the word is. Finished.

14 Q. So the rift ended at the -- it ended in the second
15 Intifada, and when was the second --

16 A. During the period of the time of the second Intifada. At
17 that time Hamas was -- I can't say that Jamil Hamami held the
18 same view that he expressed in 1996, let's say towards the
19 negotiation or the recognizing Israel. I cannot say that the
20 same views of Hamami held during the second Intifada.

21 Q. Okay. Now, Ms. Hollander also asked you about Operation
22 Defensive Shield, and she pointed out that there were
23 confrontations in Jenin and that there were casualties. Do
24 you remember that?

25 A. Correct.

1 Q. What event prompted the Israeli army to start Operation
2 Defensive Shield? Did you understand my question?

3 A. No. I just thought there was objection.

4 THE COURT: No. I didn't hear one.

5 MS. HOLLANDER: I was waiting for him to start. I
6 stood up for another reason. But there is an objection to
7 this under 403.

8 THE COURT: Okay. Overrule the objection.

9 Q. (BY MS. SHAPIRO) What event prompted Operation Defensive
10 Shield?

11 A. 27 March, 2002, the evening Passover, a suicide bomber
12 entered the Park Hotel, killing 32 Israeli citizens. That day
13 the Israeli government took a decision. This was the last
14 suicide attack, serious suicide attack going on between
15 January, February, and March 2002. And the Israeli government
16 ordered the Israeli army to go and to go after the terrorist
17 cells, the terrorist activists, the terrorist headquarter.

18 Q. Was there something in particular about the Park Hotel
19 suicide bombing that was the straw that broke the camel's
20 back, so-to-speak?

21 MR. DRATEL: Leading.

22 THE COURT: Overruled.

23 THE WITNESS: I think at that time the Israeli
24 society was shocked from this event. This was many, many
25 Israeli citizens that were killed at that time at that special

1 event, and it was a holiday, it was a holiday --

2 MR. DRATEL: Object under 403, Your Honor.

3 THE COURT: Overruled.

4 Q. (BY MS. SHAPIRO) What holiday was it?

5 A. Passover.

6 Q. Is that a Jewish holiday?

7 A. Yes.

8 Q. Okay.

9 A. And I think it shocked a lot of Israeli citizens. The
10 scope of the event, the number of the casualties actually.
11 And that is why the Israeli government actually decided to put
12 an end to the fact that on a daily basis suicide bombers just
13 entered Israel and explode and killed Israeli citizens. So I
14 think this is what led to the Operation Defensive Shield.

15 Q. Ms. Hollander also talked to you a little bit about the
16 United Nations, United Nations Relief Agency. And she
17 mentioned that the United Nations runs schools in Gaza and the
18 West Bank. Is the United Nations a designated terrorist
19 organization?

20 A. No.

21 Q. Okay. Now, Ms. Moreno asked you about an exhibit called
22 Jenin Zakat No. 6, and it was a videotape from Jenin, taken
23 from the Jenin zakat committee. And then she showed you Jenin
24 Zakat No. 7, which was a letter addressing the issue of summer
25 camps, and that letter was dated in 2003 and the video was

1 from 2004. Do you remember that?

2 A. Yes.

3 Q. Okay. That letter that was in 2003, what was that meant
4 to illustrate?

5 A. This letter actually was an instruction from the global
6 network of Hamas to the committee of Jenin, the zakat
7 committee of Jenin to handle differently their summer camps.
8 The reason to handle differently, it is changing the name,
9 changing the manner and the kind of activities. But they say
10 there that the reason why it was sent is because of the
11 problems of the brothers in Europe. At that time, as I
12 explained in my testimony, there were legal actions taken
13 against some of the global network foundations by several
14 countries, like in Germany, like in Netherlands.

15 Q. Now, Ms. Moreno also asked you about polling. Do you
16 remember that?

17 A. Yes.

18 Q. About taking polls. If somebody from the West -- When I
19 mean the West, I mean the United States or Europe. Somebody
20 from the West went into the West Bank and took a poll, would
21 that be determinative for you? When I mean take a poll, take
22 a poll about whether or not a committee is controlled by
23 Hamas.

24 A. I understand the question. I wouldn't rely on a poll as
25 long as we are talking about -- I wouldn't rely on polls that

1 are conducted in the Palestinian Authority as well as other
2 places, by the way, but also in the Palestinian Authority.
3 The indication -- There is a big end occasion, for example,
4 many polls before the election, the last election in the
5 Palestinian Authority in 2006, predicted winning for the
6 Fatah. That didn't happen.

7 Q. Okay. What about if a Westerner came--I am talking about
8 specifically somebody from Europe or somebody from the United
9 States--came to the West Bank and asked a lot of people what
10 they thought about this committee. Would that be reliable?

11 MR. DRATEL: We object, Your Honor. He is not a
12 pollster and beyond the scope, and speculative.

13 THE COURT: You asked about polling. He may give an
14 opinion. Go ahead.

15 THE WITNESS: I would say that when a foreigner
16 comes to a community or society like the Palestinian society,
17 I wouldn't say that everything that the Palestinian has in his
18 mind he would tell to others, and I would say that he would
19 be -- First of all, ask if his name is going to -- if they are
20 going to expose his name. So I cannot -- You know, I cannot
21 even estimate what the weight that this poll will have even by
22 Palestinians themselves. And say I if the Palestinian
23 themselves, the polls of the Palestinians are not accurate,
24 why should we rely on other external polls.

25 Q. (BY MS. SHAPIRO) Okay. Now, Ms. Moreno also talked to

1 you about some documents that had the location of these zakat
2 committees right on the stationery. Do you remember that?

3 A. Yes.

4 Q. Now, when you talked about the committees and their
5 character being secret to the local community, were you
6 referring to the location of the committee itself, or were you
7 referring to its control by Hamas?

8 A. No, no, no. It was very clear I was talking about the
9 affiliation to Hamas.

10 Q. Okay. Not just the location was secret?

11 A. No, I was not talking about the location. The location,
12 by the way, is something that is known to the Israeli
13 government. It is known to -- Sometimes they give it in an
14 internet site. I am not talking at all about locations. This
15 is not what we are talking about.

16 Q. Okay. Now, Ms. Moreno also put up this Demonstrative
17 No. 35, and she asked you whether each of these committees was
18 designated, and then she crossed off each one. Do you
19 remember that?

20 A. Yes.

21 Q. Okay. Now, on this demonstrative, were the committees
22 that are listed here -- And I am not talking about
23 designation. I am talking about because -- Let me ask you.
24 Are you aware of whether Hamas was designated in the United
25 States between 1995 and 2001?

1 A. Yes.

2 Q. Okay. And was it?

3 A. Yes.

4 Q. Okay. So not referring to designation now, but let's
5 talk about whether these committees listed here were
6 controlled by Hamas or part of the Hamas social wing. Okay?

7 A. Just, about the designation --

8 Q. I am not asking you about the designation. I am just
9 asking you about whether each of these was controlled by Hamas
10 or part of the Hamas social wing. Okay? The Jenin zakat
11 committee?

12 A. Yes.

13 Q. Okay. Nablus zakat committee?

14 A. Yes.

15 Q. Tulkarem zakat committee?

16 A. Yes.

17 Q. Qalqilya zakat committee?

18 A. Yes.

19 Q. Ramallah zakat committee?

20 A. Yes.

21 Q. Islamic Science and Culture Committee?

22 A. Yes.

23 Q. Bethlehem Orphan Care, Orphan Society, though we have
24 stipulated it is not in the indictment?

25 A. Correct.

1 Q. Islamic Charitable Society in Hebron?

2 A. Correct.

3 Q. And they are controlled by Hamas, as circled in this
4 demonstrative. Is that right?

5 A. I would think the word controlled is not only controlled
6 part of Hamas --

7 Q. Okay. Part of the Hamas social wing?

8 A. Controlled and part of Hamas. I think this is the
9 definition as an expert I --

10 Q. Okay. With that, is this Demonstrative No. 35 an
11 accurate representation of your opinion?

12 A. Yes.

13 MS. SHAPIRO: Can I have a moment, please, Your
14 Honor?

15 THE COURT: Yes.

16 MS. SHAPIRO: Pass the witness, Your Honor.

17 THE COURT: Mr. Dratel?

18 RECROSS EXAMINATION

19 By Mr. Dratel:

20 Q. Good morning.

21 A. Good morning.

22 Q. In 1993 Israel had civil control over the West Bank and
23 Gaza. Right?

24 A. Correct.

25 Q. And military control.

1 A. Correct.

2 Q. And police control.

3 A. That is not correct, not accurate.

4 Q. There wasn't a Palestinian Authority. Correct?

5 A. There was not until it was formally -- from the Oslo
6 Accord in September that is formally announced.

7 Q. Right. But there was no Palestinian Authority --

8 A. Police inside.

9 Q. Right.

10 A. Okay. Yes.

11 Q. So it was Israel that controlled that area?

12 A. Israel controlled the area. Correct.

13 Q. Hamas was declared illegal by Israel in 1989.

14 A. Correct.

15 Q. It was perceived as a threat to Israel in 1989.

16 A. No. That is not accurate.

17 Q. It was declared illegal. But Hamas was not considered a
18 threat?

19 A. This is something I have to clarify. When you designate,
20 you refer to information that comes from before, from the
21 past. You are not designated to predict the future. When you
22 are saying that it was designated in 1989, in 1987 in Israel
23 it was already a threat.

24 Q. I am sorry. But by -- It was perceived a threat in 1987?

25 A. It was perceived. And designated is a summary of a

1 threat, and usually it comes a few years after --

2 Q. You misunderstand my question. My question was certainly
3 by 1989 and as early as 1987 Hamas was perceived as a threat
4 to Israel.

5 A. Perceived earlier. And then it was designated legally.

6 Q. In 1989?

7 A. That is correct.

8 Q. Okay. And 1991 is the date for you of the point of no
9 return of the committees, the zakat committees that we are
10 talking about.

11 A. Correct.

12 Q. In terms of Hamas control.

13 A. Correct.

14 MR. DRATEL: Now can we pull up designation No. 1,
15 please, the last page?

16 Q. (BY MR. DRATEL) This is the designation of Interpal by
17 the United States as a specially designated terrorist, on the
18 last page. And that date is August 21st, 2003. Correct?

19 A. Correct.

20 Q. Okay. And by the way, I just want to clarify. 1989,
21 when you said Hamas was designated, that was Israel. Not in
22 the United States. Correct?

23 A. Correct.

24 Q. Now, you talked about Hamas and its position on the zakat
25 committees. Right? On redirect with Ms. Shapiro?

1 A. What do you mean position.

2 Q. In other words, Hamas' public position and -- In other
3 words, the Hamas indications of its control of these
4 committees over time.

5 A. I don't think this is -- We were talking about Hamas
6 control.

7 Q. Yeah. Okay.

8 A. Of the time.

9 Q. And isn't it a fact that Hamas in 1994 publicly stated
10 that the committees were independent religious institutions?

11 A. That is not what I wrote from the -- That is not what I
12 cited from the al-Sabil.

13 Q. Hamas didn't say that?

14 A. Hamas called Yasser Arafat not to touch them and to keep
15 them independent.

16 Q. Right. And so let's look at page 43, if you want to. I
17 will give it to you.

18 A. I have it. It is okay.

19 Q. I want to show you the highlighted part so we can save
20 some time.

21 A. I can read it. "Hamas called upon Arafat and the PA not
22 to harm the position of these institutions and stop" --

23 Q. Can you read the whole thing? Can you read the whole
24 thing from --

25 MS. SHAPIRO: I am sorry. Objection, Your Honor.

1 Q. (BY MR. DRATEL) This is something you wrote, yourself.
2 Right?

3 THE WITNESS: Yes.

4 MS. SHAPIRO: He is reading from something --

5 THE COURT: You are saying he is reading from
6 something he wrote?

7 MR. DRATEL: Yes.

8 THE COURT: Okay.

9 MS. SHAPIRO: Thank you.

10 Q. (BY MR. DRATEL) Start reading -- read the whole
11 paragraph.

12 A. I will. But if you don't mind, I WILL read from here.

13 Q. That is fine.

14 A. Okay. I will read. "Another article emphasizing the
15 centrality of the charitable layout in funding Hamas was
16 published on August 23rd, 1994, al-Sabil Jordan. According to
17 the article, Hamas published a statement which criticized the
18 Palestinian Authority because of the decision of the Chairman
19 Arafat to intervene in the practice of the Islamic and
20 independent charitable institution, and to subordinate the
21 institution to the direct inspection of the Palestinian
22 Authority. It was also written in the announcement that Hamas
23 stresses the independence of the institution which are not
24 subject to negotiate"--"which are not subject to negotiate,
25 that is what I wrote--"and not to impose on them any

1 sovereignty. Since they are popular independent institutions.
2 Hamas call upon Arafat and the PA not to harm the position of
3 these institutions and stop tightening their steps."

4 So I said -- you said half of what is written here.

5 Q. You read the whole thing just now. Right?

6 A. Yes.

7 Q. Okay. You wanted to read the second half.

8 Okay. Now, as of 2001, December of 2001, Ramallah zakat
9 committee, open and operating. Correct.

10 A. December 2001?

11 Q. Yes.

12 A. Ramallah zakat was operating.

13 Q. Jenin. Operating?

14 A. No. In Jenin there was a short closure and then it was
15 reopened.

16 Q. It was reopened. Tulkarem. Operating?

17 A. In 2001?

18 Q. Yes.

19 A. Correct.

20 Q. Hebron ICS.

21 A. Short closure, but it was reopened.

22 Q. Qalqilya.

23 A. Was operating.

24 Q. And the other committees that were on the list that Ms.

25 Shapiro told you, all open and operating in 2001. Do you need

1 the list?

2 A. If you just ask me specific I will answer.

3 Q. Nablus zakat. Right? Still open and operating?

4 A. It was shut down for a short time.

5 Q. 2001?

6 A. Also al-Tadamoun. But it was reopened.

7 Q. But reopen. Right?

8 A. Correct.

9 Q. Okay.

10 MR. DRATEL: Pass the witness, Your Honor.

11 THE COURT: Mr. Westfall?

12 MR. WESTFALL: Your Honor, I have no further
13 questions.

14 THE COURT: Ms. Hollander?

15 MS. HOLLANDER: Yes, sir.

16 RECROSS EXAMINATION

17 By Ms. Hollander:

18 Q. A mosque is a public place, isn't it? The public can go
19 into a mosque, can't they?

20 A. Correct.

21 Q. So the mosques in the various cities in the West Bank are
22 open to the public, to pray or whatever they want to do in the
23 mosque. Correct?

24 A. Correct. Of course, in general, you meant unless you
25 find weapons in a specific mosque.

1 MS. HOLLANDER: Move to strike as non-responsive. I
2 didn't have a question, Your Honor.

3 THE COURT: Sustained. Just try to answer her
4 question, if you would.

5 Q. (BY MS. HOLLANDER) I get to ask the questions and you
6 answer them.

7 THE COURT: Counsel, he understands. Just ask your
8 questions.

9 Q. (BY MS. HOLLANDER) Now, you have talked about Jamil
10 Hamami. Correct?

11 A. Correct.

12 Q. And you just said, when Ms. Shapiro asked you, that he
13 had this rift in the '90s, and you think he went back to Hamas
14 in 2001. Correct?

15 A. I said the second Intifada.

16 Q. Right.

17 A. That period of time.

18 Q. 2000. Right? It started in 2000, 2001?

19 A. Well, it is a process. It is not a day that I can say in
20 November 2001, the first of November he came back to Hamas.
21 It was a gradual process. But he came back to Hamas.

22 Q. But you have testified previously about Jamil Hamami, and
23 on August 16th, 2007 you said, "I would say there was a
24 dispute inside the family." And you were asked by -- You were
25 asked about when was that approximately, and you answered, "I

1 think it was around the mid '90s and a little bit further it
2 was a kind of dispute, but I think after, that like every good
3 family they reconcile. And Jamil Hamami is definitely Hamas
4 activist today." You also said the next sentence, "Even
5 though there was a dispute, he never left the Hamas
6 organization." That was your testimony. Correct?

7 A. And that is exactly what I am saying. Correct.

8 Q. Okay. Now, you also talked about the suicide bombings
9 that in your opinion were the precipitating factors in
10 Operation Defensive Shield.

11 A. The word precipitate --

12 Q. You talked about suicide bombings in Israel and then
13 Operation Defensive Shield followed that. Correct?

14 A. Okay.

15 Q. That is what you said. Okay. And during Operation
16 Defensive Shield, and we have talked about it before, the
17 basic time period was about three weeks. Correct? Three,
18 three and a half weeks?

19 A. I didn't say three and three and a half, but it is --

20 Q. Is that close enough?

21 A. That is during April.

22 Q. During April. Okay. Maybe it was four weeks. During
23 that time you are aware of the fact that there were 500
24 Palestinians killed. Correct?

25 A. I don't have the exact number, but I can confirm that

1 there were --

2 Q. And about 1500 were wounded. Correct?

3 A. I don't think that I have these numbers.

4 Q. Okay. It was a lot, wasn't it? It was a large number.
5 Correct?

6 A. I think 500, this is more than the number that I review
7 once, but if I don't remember so it will not support your
8 opinion.

9 Q. Is the -- That is fine. But you know it was a large
10 number. Correct? You don't disagree with that?

11 A. I don't disagree that there were persons killed.

12 Q. Now, you talked about polls and how difficult they are,
13 you said, in your opinion, to run. But in your research polls
14 could be valuable, couldn't they? If you considered them
15 useful they would be a useful thing for someone to look at if
16 you could rely on them.

17 A. Polls can help. It depends on the place, time, and
18 society, and it should be fit to what you are wanting to
19 achieve.

20 Q. During the 1990s, the Internal Republican Institute,
21 funded by the United States government, provided \$400,000 for
22 polls in the West Bank. Did you ever review any of those
23 polls?

24 A. No.

25 Q. Now, I would like to -- You also mentioned that it was

1 the policy of Israel in 1992 and 1993 not to interfere with
2 religion of the Palestinians. The policy of Israel. Correct?

3 A. Correct.

4 MS. HOLLANDER: Would you pull up InfoCom clip No.
5 26-A? InfoCom Search No. 26-A.

6 (Whereupon, InfoCom Search 26, Clip A was played.)

7 Q. (BY MS. HOLLANDER) Did you see at the end -- Now, this
8 is a document, a video that is in evidence in this case, and
9 this was from the time when Israel deported approximately 412
10 or 415 men in 1992. Correct?

11 A. Correct.

12 Q. Same period of time you were talking about?

13 A. Correct.

14 Q. And this is what the Government played. And I want you
15 to see what is also in evidence as Defendants' Exhibit No.
16 1417, which is how this sentence continues. The sentence
17 continues, that the Government did not play, "And some
18 brothers did not belong to any group, but they got used to
19 praying at the mosque, and they grow their beards, so they
20 arrested them." The they would be Israel. Correct?

21 A. Correct.

22 Q. "We consider this probably an assault, not just on the
23 land of Palestine but on all Muslims worldwide." This was
24 part of that video from 1992. Do you understand that?

25 A. This is part of the video.

1 Q. Right. And that was during a time when you said Israel
2 did not interfere with religious institutions. Correct? That
3 is what you said. Is that what you said?

4 A. I still say that.

5 MS. HOLLANDER: I will pass the witness, Your Honor.

6 THE COURT: Ms. Cadeddu?

7 MS. CADEDDU: I have no further questions, Your
8 Honor.

9 THE COURT: And Ms. Moreno?

10 MS. MORENO: No further questions, Your Honor.

11 MS. SHAPIRO: Nothing further, Your Honor.

12 THE COURT: Members of the jury, let's go ahead and
13 take the morning recess at this time.

14 Let me ask you to step back into the jury room.

15 (Whereupon, the jury left the courtroom.)

16 THE COURT: All right. Are you prepared to rest?

17 Why don't we take a short break, about 15 minutes, and we
18 will come back in. I assume you are going to have some
19 motions. I will hear briefly, I don't want to hear a lot, but
20 I will certainly hear your motions so you can get it on the
21 record.

22 MS. HOLLANDER: Your Honor, if you have a minute, I
23 have the funding issue if you want to do that now.

24 THE COURT: We can.

25 And we will be in recess. Be back in 15 minutes,

1 counsel, and I will hear your motions.

2 And then you will be prepared to proceed then?

3 MS. MORENO: Yes, Your Honor. He is outside.

4 THE COURT: All right.

5 (Brief recess.)

6 THE COURT: Let me ask counsel to come up here a
7 minute.

8 (The following was had at the bench.)

9 THE COURT: It is just a scheduling thing. Does Avi
10 have like a flight scheduled that he is trying to meet?

11 MR. JACKS: I am not sure.

12 THE COURT: We may need to have him testify outside
13 the presence of the jury to make a record.

14 But what I want to do is take your motions and rule on
15 those and then bring the jury in and start the witness, and
16 once we excuse the jury we can do that.

17 MR. JONAS: We will send an agent down.

18 THE COURT: Find out and make sure that is not a
19 problem, and we can do that.

20 I would rather do it after the jury leaves, but I don't
21 want to miss something if he has something. So we will see
22 what they say.

23 (The following was had in open court.)

24 THE COURT: Who is ready to go on the motions?

25 Mr. Westfall? We will hear from you.

1 MR. WESTFALL: Very well.

2 Your Honor, on behalf of Abdulrahman Odeh, we move for an
3 instructed verdict of acquittal of not guilty as to all issues
4 in the indictment as they appear to Abdul Odeh. In
5 particular, there is legally insufficient evidence and
6 factually insufficient evidence to show that he was a part of
7 either any of the three conspiracies that he is charged with.

8 THE COURT: Okay. Thank you.

9 Who wants to go next?

10 MS. HOLLANDER: On behalf of Shukri Abu Baker we
11 move for a judgment of acquittal on all counts.

12 THE COURT: Thank you.

13 Mr. Dratel?

14 MR. DRATEL: Your Honor, on behalf of Mohammad
15 El-Mezain I move for a judgment of acquittal on the one count
16 charged against Mr. El-Mezain as to all elements.

17 And I will just add briefly that the Government has not
18 presented any evidence with respect to the applicable time
19 frame for Mr. El-Mezain, certainly not sufficient evidence
20 with respect to any of the elements between October 8th, 1997
21 and December 4th, 2001 or thereafter, and that they are
22 estopped from relying on the prior evidence by collateral
23 estoppel because the jury previously has already found he was
24 not a co-conspirator from the 1995 period through the 1997
25 period by acquitting him of the other conspiracy and all of

1 the substantive counts.

2 THE COURT: Okay. Thank you.

3 Ms. Moreno?

4 MS. MORENO: On behalf of Ghassan Elashi, I move for
5 a judgment of acquittal as to all counts and as to all
6 elements.

7 MR. DRATEL: And also double jeopardy.

8 THE COURT: Yes.

9 Ms. Cadeddu?

10 MS. CADEDDU: On behalf of Mr. Abdulqader, I move
11 for judgment of acquittal pursuant to Rule 29, as well as
12 double jeopardy for dismissal on that motion.

13 And with regard specifically to the issue of whether Mr.
14 Abdulqader was a member of the conspiracy, the Government has
15 adduced no evidence of any participation in any of the
16 conspiracies charged. He was a singer is the evidence and he
17 was a volunteer fundraiser, and that is insufficient to carry
18 the Government's burden.

19 MS. MORENO: Your Honor, I need to supplement my
20 motion for dismissal with respect -- I would also assert the
21 grounds of double jeopardy on behalf of Mr. Elashi.

22 MR. WESTFALL: Your Honor, I think I said all
23 issues. I meant to say all elements, all counts, all elements
24 that Abdul Odeh is charged with, there is legally insufficient
25 evidence.

1 MS. HOLLANDER: I suppose I should add that we make
2 our motion on the basis of denial of the protections against
3 double jeopardy.

4 THE COURT: And those motions will be denied. I
5 believe there is sufficient evidence as to each of the
6 Defendants to submit the case to the jury.

7 We will let you rest, then, in the presence of the jury.
8 Did you fiend out about scheduling?

9 MR. JONAS: My understanding is he is not going
10 anywhere.

11 THE COURT: Okay.

12 MS. DUNCAN: Your Honor, we actually had two other
13 motions to make at the close of the Government's case.

14 We just filed on ECF a motion to strike all the purported
15 co-conspirator statements in this case thus far. I am not
16 going to repeat it. It is in our motion, and we direct the
17 Court to that. But basically it is that the Government has
18 failed to meet its burden of proving each statement the
19 Government provisionally introduced under the co-conspirator
20 exception that, A, a conspiracy existed; b, that the declarant
21 and the person, these Defendants here, were members of that
22 conspiracy during the relevant time period; and third, that
23 the statements were made in furtherance of that conspiracy.

24 MR. DRATEL: And Your Honor, what is not in the
25 written is with respect to Mr. El-Mezain specifically that the

1 Government is precluded by collateral estoppel from using
2 those, because the jury has -- a jury has already found that
3 he was not a conspirator, part of any conspiracy between 1995
4 and 1997. And that would also preclude the joint venture
5 issue pre-'95, because essentially the jury found that as well
6 in acquitting him of the other counts.

7 THE COURT: All right. And did you say there was
8 another motion?

9 MS. DUNCAN: Just the last motion, Your Honor, was a
10 motion for mistrial based on the accumulation of the
11 prejudicial evidence or the evidence that we have objected to
12 and sought a mistrial before in this case.

13 THE COURT: And just generally, and we will address
14 it more specifically, the issue with the co-conspirator
15 statements, that is denied. I think the Government has
16 established a conspiracy, and they have established some
17 evidence that each of these Defendants was a member of that
18 conspiracy. And we will address that more specifically at
19 some point between now and the jury charge in terms of what is
20 going to the jury. But generally the Government has
21 established some evidence, presented some evidence to
22 establish a conspiracy.

23 And then the second motion?

24 MS. DUNCAN: A motion for mistrial based on the
25 effect of all the issues we have asked for a mistrial before.

1 THE COURT: That is denied as well.

2 Mr. Westfall?

3 MR. WESTFALL: Your Honor, I need to join in the
4 motions for dismissal on double jeopardy and collateral
5 estoppel grounds on behalf of Abdul Odeh.

6 THE COURT: You have that, and that is denied on the
7 same basis as others.

8 Ms. Moreno, is this your witness coming up?

9 MS. MORENO: Yes, Your Honor. He is here waiting
10 outside.

11 MS. HOLLANDER: Your Honor, can the Marshals somehow
12 tell people they can come back?

13 THE COURT: They can, and then they will have to
14 leave when we get Mr. Avi again.

15 MS. HOLLANDER: Right.

16 THE COURT: Or if somebody is down there that can
17 tell them that. I am not going to stop proceedings for that.

18 Bring the jury in and bring your witness in.

19 (Whereupon, the jury entered the courtroom.)

20 THE COURT: Mr. Jacks or Mr. Jonas?

21 MR. JACKS: Your Honor, at this time, ladies and
22 gentlemen of the jury, the Government would rest its case in
23 chief.

24 THE COURT: Okay. And Ms. Moreno, you are ready to
25 call your witness?

1 MS. MORENO: Yes, Your Honor. Thank you.

2 THE COURT: Members of the jury, the Government has
3 finished its case, so now you will be hearing evidence from
4 the Defense, and they are able to present their case.

5 MS. MORENO: Your Honor, the Defense calls Mr. John
6 Bryant to the stand.

7 (Whereupon, the oath was administered by the Clerk.)

8 JOHN BRYANT,

9 Testified on direct examination by Ms. Morano as follows:

10 Q. Good morning, sir.

11 A. Good morning.

12 Q. Could you state your name for the record, please?

13 A. John W. Bryant.

14 Q. Mr. Bryant, where do you live?

15 A. Dallas.

16 Q. And how long have you lived in Dallas?

17 A. Since 1965.

18 Q. And Mr. Bryant, what do you do for a living?

19 A. I am a lawyer.

20 Q. And how long have you been a lawyer, sir?

21 A. Since 1972.

22 Q. Where did you go to law school?

23 A. Southern Methodist University.

24 Q. And is that Southern Methodist University here in Dallas?

25 A. Yes.

1 Q. Okay. Now, in addition to being a lawyer, during your
2 life you have been in government service. Is that correct?

3 A. That is correct.

4 Q. Okay. And have you held elected office?

5 A. Yes, I have.

6 Q. Mr. Bryant, what was the first elected office you held?

7 A. I was a member of the Texas House of Representatives for
8 five terms.

9 Q. And five terms, how many years would that be, sir?

10 A. In my case it was nine years. My first term was a
11 partial term.

12 Q. Other than the Texas legislature, have you held office?

13 A. Yes. I was a member of the U.S. Congress representing
14 Dallas.

15 Q. And can you tell the jury what period of time you
16 represented Dallas in the United States Congress?

17 A. From January of 1983 until January of 1997.

18 Q. And have you held any presidential appointments, sir?

19 A. Yes. I was in charge of our government's
20 telecommunications treaty negotiations at the International
21 Telecommunications Union in Geneva in 1997.

22 Q. Now, I know you don't go by ambassador, but did you
23 actually hold that rank at one period?

24 A. Yes.

25 Q. And did you have a security clearance in connection with

1 that?

2 A. Yes, I did.

3 Q. And what kind of a clearance was that, sir?

4 A. Top secret.

5 Q. And you are not going to be talking about any classified
6 information today here. Is that correct?

7 A. No, I am not.

8 Q. Now, what did you do after you left Congress?

9 A. Well, I did the job assigned to me in Geneva, and then
10 after that I returned to Dallas.

11 Q. And what year was that?

12 A. I returned to Dallas in 1998.

13 Q. And did you pick up your law practice then?

14 A. Yes, I did. If I might clarify, I actually returned to
15 Dallas in late 1997.

16 Q. Okay. All right. And so from 1997 currently you are
17 maintaining a law practice. Is that correct?

18 A. That is correct.

19 Q. Now, at some point in time did the Holy Land Foundation
20 retain you?

21 A. Yes, they did.

22 Q. And do you recall when that was?

23 A. Late 1997.

24 Q. After Holy Land came to employ you, did you set up any
25 meetings with government officials?

1 A. Yes, I did.

2 Q. Now, let me ask you before we discuss those meetings, was
3 there anything going on publicly in the public realm that made
4 you think it was a good idea to set up those meetings?

5 A. Yes.

6 Q. And what was that?

7 A. Well, for several years prior to the time that I was
8 retained, there had been periodic news reports that included
9 assertions that somehow the Holy Land Foundation was involved
10 in providing assistance to organizations overseas to whom it
11 would be illegal to provide assistance, and assertions that
12 they were under some kind of an investigation. These were
13 unattributed reports, and so I began to set up meetings in
14 order to find the source of these reports and see if we could
15 address the concerns, if there were really any concerns. And
16 if there were not any concerns, we could dispel of those
17 rumors and hopefully put an end to these reports.

18 Q. Let's talk a little bit about those meetings that you had
19 with government entities. First of all, did you meet with any
20 foreign governments?

21 A. Yes, I did.

22 Q. Who was that?

23 A. I met with the Charge (French, phonetically Sharje),
24 which is a fancy word for the number two man in charge of the
25 Israeli embassy.

1 Q. And do you remember what year that would have been, sir?

2 A. That would have been in 1998.

3 Q. Okay. And where was that meeting held?

4 A. At the Israeli embassy in Washington.

5 Q. Washington, D.C.?

6 A. Yes.

7 Q. And how is it that you set up that particular meeting?

8 A. I called and requested the meeting.

9 Q. All right. So you requested it on behalf of the Holy
10 Land Foundation?

11 A. Yes.

12 Q. So do you remember the gentleman's name who you met with?

13 A. Yes. It was Mr. Ben-David.

14 Q. Okay.

15 A. Ben-David is his last name.

16 Q. Okay. Now, you met with him at the Israeli embassy in
17 Washington, D.C. Correct?

18 A. Yes.

19 Q. And was there anyone else with you at this meeting with
20 Mr. Ben-David?

21 A. No.

22 Q. Now, when you met with Mr. Ben-David at the Israeli
23 embassy, did you ask him for any guidance?

24 A. Yes. I observed to him that these reports had repeatedly
25 surfaced in the newspaper, and that the Holy Land Foundation

1 was providing significant financial relief to Palestinian
2 refugees and other Palestinian people who were in need of
3 relief, and if indeed the government of Israel had concerns
4 about the way in which they were providing that relief, if he
5 would simply give me guidelines I would convey those to the
6 Foundation and they would operate within those guidelines so
7 that the government of Israel would not have any concern about
8 the way this was being carried out.

9 Q. Now, how did Mr. Ben-David respond to this request for
10 guidance?

11 A. Positively. He viewed it as a helpful suggestion and
12 said that he would get back to me.

13 Q. Did Mr. Ben-David ever get back to you?

14 A. No, he did not.

15 Q. Did you get back to him?

16 A. Yes. I contacted him and I was informed that he had been
17 told by his own government that he was not to talk to the Holy
18 Land Foundation anymore.

19 Q. What was the next governmental meeting that you had that
20 year, if you recall?

21 A. Well, I don't recall the exact order in which these
22 meetings took place, but we also met with the Federal Bureau
23 of Investigation on three occasions.

24 Q. Okay. Let's take those in order. Where were the
25 meetings with the Federal Bureau of Investigation held, sir?

1 A. Two of the meetings were held here in Dallas at the
2 offices of the FBI.

3 Q. And where was the third meeting held?

4 A. The third meeting was held in Washington, D.C. It was a
5 meeting with Stephen Jennings who was at that time the number
6 two man in the Counterterrorism Division of the FBI.

7 Q. Now, the meeting in Washington, D.C., who -- Besides
8 Mr. Jennings, who else was at that meeting?

9 A. Only me and him.

10 Q. All right. And now these meetings with the FBI, what
11 years did they take place, if you recall?

12 A. I believe all these meetings took place in 1998 and 1999.

13 Q. Okay. Now, you said you had two meetings in Dallas.
14 Correct?

15 A. Yes.

16 Q. And who did you meet in Dallas at the FBI headquarters?

17 A. The first meeting was with the agent in charge of the
18 Dallas office Mr. Danny Defenbaugh and other agents and
19 members of his staff whose names I can't recall. That was the
20 first meeting.

21 Q. And do you remember what year that might have been?

22 A. I believe that was in 1998.

23 Q. Now, were you alone in that meeting or were you
24 accompanied by anyone?

25 A. No, Shukri Abu Baker and Ghassan Elashi accompanied me.

1 Q. To the meeting with Mr. Defenbaugh?

2 A. Defenbaugh and his staff, yeah.

3 Q. And what was the position of Mr. Defenbaugh with the FBI,
4 if you recall?

5 A. He was the head of the Dallas office.

6 Q. Now, the second meeting with the FBI was also in Dallas.
7 Correct?

8 A. That is correct, yes.

9 Q. And do you recall who was present at that particular
10 meeting?

11 A. I believe at that meeting first Shukri Abu Baker and
12 Ghassan Elashi accompanied me to that meeting, and I believe
13 that the agent we met with was named Steven Garrett. I
14 believe that is correct. And I don't recall if -- He have
15 been accompanied by someone else.

16 Q. But it was not with Mr. Defenbaugh?

17 A. No, he wasn't present.

18 Q. And what was your understanding of Mr. Garrett's position
19 with the FBI, if you know?

20 A. I don't know.

21 Q. Now, at each of those three meetings with the FBI, the
22 two in Dallas and the one in Washington, D.C., did you ask for
23 guidance on what the Holy Land Foundation should be doing
24 differently, if anything?

25 A. Yes, I did.

1 Q. And were you given any guidance?

2 A. No, I was not.

3 Q. At any of these meetings did anyone from the FBI tell you
4 that the Holy Land Foundation should not be doing business
5 with these zakat committees and charitable societies in the
6 West Bank and Gaza?

7 A. They did not.

8 Q. Now, after your meetings with the FBI, did you meet with
9 the State Department?

10 A. Yes, I did.

11 Q. And who did you meet with at the State Department?

12 A. I met with Michael Sheehan who was the head of the
13 Counterterrorism Division of the State Department, and there
14 was someone else present that worked for him.

15 Q. Do you recall what year that might have been, sir?

16 A. I am not certain. I assume that was probably in 1999,
17 possibly 2000.

18 Q. And where would that meeting have taken place?

19 A. In the State Department headquarters in Washington, D.C.

20 Q. And was anyone from the Holy Land Foundation with you at
21 that particular meeting?

22 A. No.

23 Q. Was anyone from the State Department there other than the
24 head of the Counterterrorism Department?

25 A. There was someone else in the meeting who I took to be

1 his assistant, but I don't know the name of the person.

2 Q. Now, did you ask for guidance from the State Department?

3 A. Yes, I did.

4 Q. And did anyone from the State Department at that meeting
5 tell you that the Holy Land Foundation should not be doing
6 business with the zakat committees?

7 A. No.

8 Q. Did anyone from the State Department give you any sort of
9 guidance as to what the Holy Land Foundation should do
10 differently?

11 A. No, they did not.

12 Q. At any time during any meeting that you had with a
13 government official as counsel for the Holy Land Foundation,
14 Mr. Bryant, did anyone tell you that the Holy Land Foundation
15 should not be doing business with the zakat committees and the
16 charitable societies in Gaza and the West Bank?

17 A. No.

18 Q. And did anybody from the government at any time in any of
19 these meetings give you any sort of guidance as to what the
20 Holy Land Foundation should do differently?

21 A. No, they didn't.

22 Q. When did you stop representing the Holy Land Foundation?

23 A. In March of 2001.

24 Q. Let me ask you something, a couple of last questions.
25 Was there anyone in the United States government that you

1 sought a meeting with on behalf of the Holy Land Foundation
2 but you weren't able to get a meeting with?

3 A. Yes. I sought a meeting with Jim Reynolds who was the
4 head of the Criminal Division of the Justice Department,
5 unsuccessfully. I didn't get that meeting. And I asked for a
6 meeting with Secretary of State Madeleine Albright and
7 Attorney General Janet Reno, and I didn't get those meetings
8 either.

9 Q. And you asked for these meetings all on behalf of the
10 Holy Land Foundation. Is that correct?

11 A. That is correct.

12 Q. And finally Mr. Bryant, what is it you expected from the
13 United States government when you sought this guidance on
14 behalf of the Holy Land Foundation?

15 A. I expected that they would explain what concerns, if any,
16 they had; and if they had concerns, give the Foundation
17 guidance about how it could continue to provide the financial
18 relief and assistance in the West Bank and Gaza to the
19 Palestinian refugees and the Palestinian population in such a
20 way that it did not cause any concern on the part of our
21 government, if indeed they had any concerns.

22 Q. All right. Thank you.

23 MS. MORENO: Pass the witness, Your Honor.

24 THE COURT: Any other questions from Defense
25 counsel?

1 MR. DRATEL: No, Your Honor.

2 MS. HOLLANDER: No, Your Honor.

3 MR. WESTFALL: No, Your Honor.

4 MS. CADEDDU: No, Your Honor.

5 THE COURT: Mr. Jacks or Ms. Shapiro?

6 MS. SHAPIRO: Thank you.

7 CROSS EXAMINATION

8 By Ms. Shapiro:

9 Q. Good morning, Mr. Bryant.

10 A. Good morning.

11 Q. My name is Elizabeth Shapiro.

12 Now, you mentioned in your direct there were news reports
13 that you had heard that had certain allegations about the Holy
14 Land Foundation sending money overseas. Correct?

15 A. Yes.

16 Q. Okay. And the organization that Holy Land was alleged to
17 be SENDING MONEY to was Hamas. Isn't that right?

18 A. In some reports, yes.

19 Q. Okay.

20 A. These were newspaper reports.

21 Q. That is right. And that is what prompted you to seek
22 these meetings. Right?

23 A. Correct.

24 Q. Okay.

25 A. Plus the assertion that they were under investigation,

1 which was something we had not seen any evidence of.

2 Q. Okay. And you are a lawyer. Correct?

3 A. Yes.

4 Q. Okay. And, in fact, as a lawyer you have done
5 investigations yourself. Right?

6 A. Well, of cases that I was handling, yes.

7 Q. Sure. And you understand, of course, that it is
8 important not to reveal the subjects of ongoing
9 investigations. Right?

10 A. Yes.

11 Q. Okay. And as a lawyer and as a lawyer for the Holy Land
12 Foundation, you have an ethical obligation to zealously
13 represent your client. Isn't that right?

14 A. Yes. Ethically represent them, yes.

15 Q. I am sorry?

16 A. Ethically represent them.

17 Q. Of course. And we all have an obligation under the
18 ethical rules of being lawyers to zealously and ethically
19 represent your client. Correct?

20 A. Yes.

21 Q. And as part of your representation of your client, you
22 would want to investigate some of the facts before you went to
23 these meetings, wouldn't you?

24 A. Yes.

25 Q. Okay. And as part of your investigation, you probably

1 consulted with your client. Correct?

2 A. Well, I consulted with my client in the normal course of
3 being retained to represent my client.

4 Q. Of course. And --

5 A. I didn't carry out an investigation of my own client.

6 Q. I understand. But you would have consulted with your
7 client. It is natural to do that. Correct?

8 A. Yes.

9 Q. And one of the people you would have consulted with is
10 Ghassan Elashi. Isn't that right?

11 A. Yes.

12 Q. And another person you would have consulted with is
13 Shukri Abu Baker.

14 A. That is correct.

15 Q. Okay. And when you went and met with the FBI, for
16 example, you would have tried to make a case for the Holy Land
17 Foundation, wouldn't you have?

18 A. I explained to the FBI what the Holy Land Foundation
19 does, how it raises its money, and to whom it gives its money.

20 Q. Right. And did you tell the FBI when you met with them
21 that the Holy Land Foundation was part of the Palestine
22 Committee?

23 A. That wasn't the truth, as far as I know. I simply told
24 them this was a very large Muslim foundation, the largest in
25 the country, that is run by American citizens, and that

1 provides assistance overseas to the Palestinians and to other
2 Muslim groups that are in need of help in other parts of the
3 world.

4 Q. Okay. And when you talked to the FBI, you would have
5 told them that the Holy Land worked closely with an individual
6 named Ismail Elbarasse. Is that right?

7 A. I told the FBI just -- What I just told you I told them.

8 MS. MORENO: Your Honor, may we approach?

9 THE COURT: Yes.

10 (The following was had outside the hearing of the
11 jury.)

12 MS. MORENO: Your Honor, Mr. Bryant's testimony as
13 counsel for the Holy Land Foundation was litigated in the
14 first trial before Judge Fish with respect to the
15 attorney/client privilege, and I am concerned that Ms. Shapiro
16 is getting into any sort of privileged communications. This
17 was fully litigated before Judge Fish, and Judge Fish found
18 that Mr. Bryant has a privilege with the Holy Land Foundation
19 and he is only their counsel, and as such his communications
20 with the Foundation through principals, Mr. Elashi and Mr. Abu
21 Baker, are privileged, and I am concerned Ms. Shapiro is
22 getting into that.

23 MS. SHAPIRO: Your Honor, one, I am not getting into
24 privilege. What was discussed with Judge Fish in the last
25 trial was whether we could ask what Mr. Bryant discussed with

1 his clients, and I am not asking that. I am purposefully
2 staying away. I am asking whether he conveyed certain
3 information to the FBI.

4 MS. MORENO: Which is based on --

5 MR. JONAS: Your Honor, if I can interject, I
6 remember this very clearly because Mr. Bryant was my witness
7 in the last trial, and I remember specifically having a
8 conversation with Mr. Cline about the exact nature of the
9 questions Ms. Shapiro is asking this witness, because Mr.
10 Cline and I discussed this attorney/client issue extensively.
11 And Mr. Cline felt in his opinion that asking what this
12 witness told the FBI was completely proper and not
13 attorney/client privilege.

14 MS. MORENO: That is not part of any --

15 THE COURT: What he told the FBI is not privileged.
16 Obviously he is sharing that with somebody else, so what he
17 told them is not privileged.

18 MR. DRATEL: She is asking other questions about --
19 She is asking what he told them, and that is not privileged,
20 but when she starts going into other things that gets into
21 privilege, she starts putting into her questions things about
22 whether he told --

23 THE COURT: Not necessarily. Are you saying that by
24 asking the question, that that is implying.

25 MR. DRATEL: When you say in a predicate question

1 "Did you consult with your client, and did you then tell the
2 government X, Y, Z," that is coming from the client.

3 THE COURT: Maybe not. I don't know who all he
4 talked to in terms of before he went to talk to the FBI.

5 MR. JONAS: Your Honor, even if the information that
6 is imparting to the FBI came from the client --

7 MS. SHAPIRO: I understand what he tells the FBI.
8 That is not what they are complaining about. That is not what
9 they are complaining about. They understand that is not
10 privileged. What they are saying is the way you are framing
11 your question is that the implication is that had to come from
12 the clients. And when he says, "I didn't tell the FBI," you
13 are still eliciting information that had to come from the
14 clients that he didn't tell the FBI. Do I have it right?

15 MS. MORENO: That is exactly the point.

16 MR. JACKS: I am still not understanding the
17 distinction. If all she is asking is what he told the FBI --

18 THE COURT: That is not what she is asking. She is
19 framing it a little different. She is not saying, "What did
20 you tell the FBI," and then getting that back. You are asking
21 about, "Did you tell him about so and so and such and such."

22 MS. SHAPIRO: All the things in evidence.

23 MS. DUNCAN: But Your Honor, for example, with the
24 Elbarasse, the evidence is that this stuff was seized from
25 2004, and so we are talking about a time period that it

1 implies that the only source of information would be the
2 Defendants in this case, and that again is privileged.

3 MS. MORENO: She said you consulted with Mr. Elashi,
4 you consulted with Mr. Abu Baker, now let's talk about what
5 you told the FBI. The implication is clear. It is privileged
6 communications, and it is not permissible, Your Honor.

7 THE COURT: Everybody understands that. The issue
8 is whether this is client information, whether this is going
9 there or not.

10 MR. JACKS: What he told them --

11 THE COURT: What he told them, That is also not --

12 MR. JACKS: They waived the privilege.

13 THE COURT: I understand that.

14 MS. MORENO: He hasn't waived the privilege to the
15 charity.

16 THE COURT: No. He waived the privilege to what he
17 told the FBI.

18 MS. MORENO: There is no privilege.

19 THE COURT: That is what he is saying.

20 MR. JONAS: The implication here is that he was
21 fully honest with the FBI. Maybe in his mind he was, but I
22 think the evidence shows there is a lot more to this picture
23 that wasn't told to the FBI, so I think Ms. Shapiro is
24 entitled to point out that there is more going on and he
25 didn't know it.

1 MR. DRATEL: That is the privilege.

2 MR. JONAS: That is why she is not asking --

3 THE COURT: One at a time. We are on the record,
4 counsel.

5 MR. JONAS: That is why she is saying, "Did you tell
6 the FBI this?" "Did you tell the FBI that?" And leaving it
7 alone.

8 MS. SHAPIRO: There is also a sword and a shield
9 issue. I mean, they are using it as a sword to try to make a
10 certain implication, and we have to be permitted to have the
11 opposite implication.

12 MR. DRATEL: Your Honor, I think what is proper is
13 for the Government to elicit what Mr. Bryant told the FBI, and
14 then they are free to argue --

15 THE COURT: You can just establish that was
16 everything he told the FBI, and then he tells you, and then
17 that included everything else.

18 MS. SHAPIRO: Can I ask him what he based that on?

19 MS. MORENO: No.

20 MS. SHAPIRO: Because I thought he said he did his
21 own inquiry.

22 THE COURT: You can ask him that. But they are
23 correct. The way you are framing it leading up to this, you
24 asked if he talked to the two Defendants and then he goes and
25 talks to the FBI. So the way you left it, it certainly is a

1 clear implication this is where this information came from.

2 MS. SHAPIRO: Okay.

3 MR. JACKS: I am not sure how if they didn't --

4 THE COURT: If they didn't tell him.

5 MR. JACKS: How it can be privileged.

6 THE COURT: What they didn't tell him.

7 MR. DRATEL: The full range of what -- I mean, that
8 is still privileged. What somebody didn't tell you, it is all
9 within the confines of the privileged communication.

10 THE COURT: But that is not communications if they
11 didn't tell him. That is their point.

12 MR. DRATEL: It gets into the communications if they
13 are asking about communications.

14 THE COURT: If he didn't make any communications --
15 communications is what is communicated. Right? Back and
16 forth. Back and forth between the lawyer or what the client
17 told the lawyer, that is communication. But if they didn't
18 tell him anything, why is that --

19 MR. DRATEL: His answer is privileged as to what is
20 said or not. That is what is privileged.

21 MS. HOLLANDER: The problem is they can ask him,
22 "What did he tell the FBI?"

23 THE COURT: Do you have any case law on this. I am
24 not sure that what he didn't tell him --

25 MR. DRATEL: His answer is privileged. "What did

1 your client tell you?"

2 THE COURT: No, it is not. If they didn't tell you
3 then it isn't communication.

4 MS. HOLLANDER: It is if you follow it to its
5 logical conclusion.

6 "Your client didn't tell you this, did he?"

7 "No, he didn't."

8 That gets into what their privileged conversations were.

9 MS. SHAPIRO: I mean, personally I think I made the
10 point. I don't need to go on.

11 THE COURT: I think that is the safe thing to do,
12 because I don't know the answer, frankly.

13 MS. SHAPIRO: He said what he told the FBI.

14 THE COURT: If you established that, that is the
15 safe thing to do. All right.

16 (The following was had in the presence and hearing
17 of the jury.)

18 Q. (BY MS. SHAPIRO) Okay. Back again. Before we broke for
19 that conference, I was asking you about the kinds of things
20 that you conveyed to the FBI. Earlier you told me what it was
21 that you said to the FBI. Is that everything that you said to
22 the FBI that you can remember?

23 A. Well, I told them that the Holy Land Foundation raised
24 money from a large number of contributors, and sent that money
25 to assist -- provide financial relief for Palestinians, among

1 other groups. They also gave relief around the world to many
2 other places as well. And I also observed that if indeed they
3 were under investigation, that they already knew where the
4 money came from and where the money went because bank
5 transactions are widely -- are transparent to investigating
6 agencies, so they knew that.

7 Q. Okay. And that is what you told the FBI, what you just
8 described. That is everything you told the FBI. Right?

9 There was no more specific information that you conveyed to
10 the FBI during that meeting. Is that your memory?

11 A. Except that we were anxious to be given guidance.
12 Remember, we had only seen news reports. We wanted to know if
13 there was an investigation. And if they couldn't confirm
14 that, could they simply provide guidance, because the Holy
15 Land Foundation was giving its relief funds to charitable
16 organizations that had existed for a very long time. That was
17 all they were doing. And if there is anything wrong with
18 that, we would certainly like to know about it.

19 Q. I understand that, and I am focusing specifically on the
20 factual information that you conveyed to the FBI. I just want
21 to be clear that what you are telling us now, that that is the
22 factual information that you conveyed to the FBI.

23 A. Yes.

24 Q. And that is your understanding of the situation.
25 Correct?

1 A. Yes.

2 Q. Thank you.

3 MS. SHAPIRO: I have no further questions.

4 THE COURT: Ms. Moreno?

5 MS. MORENO: May I have just a moment?

6 THE COURT: Sure.

7 MS. MORENO: Thank you so much, Mr. Bryant.

8 We pass the witness, Your Honor.

9 THE COURT: Mr. Bryant, you are free to go. Thank
10 you.

11 Members of the jury, we are going to go ahead and recess
12 here. This is the last witness the Defense has for today.
13 They have an expert coming on Monday from out of state, so we
14 will recess for the day.

15 Please recall the instructions we have been over about
16 not discussing the case with anyone, and we will start back
17 Monday at 9:00.

18 (Whereupon, the jury left the courtroom.)

19 THE COURT: Ms. Hollander, are you ready to go into
20 the meeting?

21 MS. HOLLANDER: I will be ready.

22 MS. SHAPIRO: Is it okay for me to talk to him at
23 this juncture? I assume it is. I just want him to understand
24 why he is coming back.

25 THE COURT: Just tell him he is going to be asked a

1 few questions outside the presence of the jury about records
2 that he relied on for his testimony.

3 And we are going to need to clear the courtroom again.

4 MS. CADEDDU: Your Honor, I just want to make sure
5 the record is clear. We have made our motions before the
6 Government rested. They were outside the presence of the
7 jury. And I have waived too much error in the Fifth Circuit
8 not to raise that again on behalf of all Defendants to all
9 counts, all the motions we made just before the Government
10 rested just to --

11 THE COURT: You are renewing them?

12 MS. CADEDDU: Just in case it matters.

13 THE COURT: And those are denied. Same ruling.

14 Mr. Avi, have a seat there. Sorry to bring you back. We
15 just have a few questions on an issue that we need to take up.

16 You are still under that seam oath you took when you
17 first started testifying.

18 Ms. Hollander?

19 MS. HOLLANDER: Thank you, Your Honor.

20 Q. (BY MS. HOLLANDER) These are some questions that have to
21 do with some discovery in this case, which is why the jury is
22 not here. And I need to make sure I understand what you were
23 saying. Okay?

24 You said -- You were talking about documents involving
25 elections of the committees. Okay? And what you said earlier

1 was, and I am just going to quote this just so we have it in
2 the record what you said that the court reporter has just
3 copied for us. "I will lead you to the paper that I gave the
4 Government and they gave to you, I assume, because you
5 presented it to me. This is the inspection that was done in
6 1992 by the Civil Administration with all the names of the
7 people that were there. Also in the binders that I gave to
8 the Prosecution, there were several documents that exposed the
9 election of all board members. You have this in your
10 possession."

11 He took that down correctly, did he not?

12 A. Correct.

13 Q. And then I believe it was -- Ms. Moreno asked you, "So
14 you have it in my possession?"

15 And your answer was, "No, I am relying on these
16 documents. So what I want to be --"

17 And then she said, "All right. You are relying on those
18 documents that you say is in this summary, and you said there
19 are more documents."

20 "I am just giving you little examples. This are more
21 than that."

22 And so that is what you said. Correct?

23 MS. SHAPIRO: Can you make sure we have a yes or no
24 for to record?

25 Q. (BY MS. HOLLANDER) I am going to ask you some questions,

1 and I just want to make sure Mr. McRoberts got that correct.

2 A. As far as I remember, that is what I said.

3 Q. Okay. Now, here are my questions. The documents that
4 you relied on were documents that were seized during Operation
5 Defensive Shield and subsequent seizures. Is that correct?

6 A. Correct.

7 Q. That is what you are talking about?

8 A. No, not only.

9 Q. Right. But for the documents. You are also talking
10 about additional documents, like prosecution documents.
11 Correct?

12 A. Also.

13 Q. Okay. And it is your understanding that those were
14 turned over to the Defense, too?

15 You don't know what was turned over to the Defense. Let
16 me ask you this. Those were turned over to the Prosecution?

17 A. No, no, it is not the answer to the question. Just a
18 second. I just want to explain. I mentioned, for example,
19 documents related to an election held in the Islamic Society
20 in Hebron, election from April 2000. These were, for example,
21 were documents that was in binders that I gave to the
22 Government a few years ago. Okay? This is one example.

23 Q. Okay. Now, let me ask you --

24 A. Another example.

25 Q. Let me ask you about that for a minute.

1 A. Okay.

2 Q. This was one document or a series of documents?

3 A. This was a series of documents. You are talking about
4 the specific documents?

5 Q. That election in 2000.

6 A. This was a series of documents that -- actually letters
7 that were sent to several foundations overseas informing what
8 were the results, what are the new board, what is the new
9 board of the Islamic Charitable Society.

10 Q. Now, were those documents that were seized from the
11 Islamic Charitable Society during one of the seizures?

12 A. Correct.

13 Q. And were -- You said they were sent to foundations
14 overseas. Were these the organizations that you have
15 mentioned here today?

16 A. No. I said that the letters were sent because there --

17 Q. You don't know for sure?

18 A. No, of course. The recipient was one of the foundations.
19 I don't know for sure if it was sent.

20 Q. This is not a trick. We are just trying to get
21 information here. Okay?

22 A. Okay.

23 Q. The foundations they were sent to, were those the places
24 you mentioned, like al-Aqsa and Interpal, or were they other
25 places?

1 A. They were other places. I mean, if I remember correct,
2 this was al-Aqsa in Netherlands, al-Aqsa in Belgium, al-Aqsa
3 in Germany, Interpal, maybe, and I am not sure, a foundation
4 in Austria.

5 Q. Okay.

6 A. Okay.

7 Q. And these letters stated who all the committee members
8 were or all the board members as a result of an election? Do
9 you remember that?

10 A. I don't remember what was said there. And if you want
11 me, I can bring my book and maybe I have it there. I am not
12 sure.

13 Q. You may have summarized it in your report. Is that what
14 you are talking about?

15 A. I summarized -- I don't think I summarized this
16 special -- I used them, of course. I was relying on them.
17 But it is not brought as a list. Okay? So it was in the
18 binders. And if I can ask to show me the binder, I will show
19 you, Al-Janadi Chairman, Sam Salab, vice chairman. And the
20 same letters, by the, way was published also in the
21 newspapers.

22 Q. Okay. Now, you had that for the Islamic Charitable
23 Society for Hebron in 2000. But am I correct that you don't
24 have this information for all of the zakat committees and all
25 of their elections? Is that correct?

1 A. It is correct that not all the zakat committees, but I
2 mentioned where I have it. And I mentioned also Tulkarem, for
3 example, and for Jenin, that I have the results of the new
4 board. Why? Because there were inspections there in these
5 places.

6 Now, during this inspection, the Civil Administration
7 interviewed the chairman of these committees and also the head
8 of the waqf was accompanied to this inspection, and they said
9 who are the board members.

10 Now, in Tulkarem for example it was just after the
11 election, and it was not -- It was I think maybe Al-Jallal
12 Jatawi or Al-Bilal Khamis who gave the names. It is written
13 in a document that is not in front of me.

14 Now, you are correct, I don't have all of the results of
15 the election; for example, Bethlehem I don't have.

16 Q. Okay. When you went through the documents to provide
17 them to the Prosecution, you chose which documents -- Did you
18 personally choose which documents to give to the Prosecution?

19 A. No. I took all the inspections that were carried out,
20 that were conducted at this time, I took all the documents of
21 the Civil Administration conducted between -- before the
22 Palestinian Authority took control and just handed them to the
23 Prosecution. This is the binder written in Hebrew with a
24 sign --

25 Q. Right. We have that document. And I think Mr. Dratel

1 will ask you some questions about it because he has reviewed
2 that document. My question goes to the other documents you
3 have reviewed and that you have relied on.

4 Am I correct that there are documents that were seized?
5 There were thousands and thousands of pages seized. Correct?

6 A. From?

7 Q. From these zakat committees during the Operation
8 Defensive Shield and then in 2003 and 2004.

9 A. Overall there were thousands of documents, but not
10 necessarily from thousands of documents from also other
11 committees that are not part of this indictment.

12 Q. Right.

13 A. Okay.

14 Q. Limiting it to the committees that are part of this
15 indictment --

16 A. Okay.

17 Q. -- do the 21 binders include every piece of paper having
18 to do with the--and this is a series of questions--with the
19 committee members, board members, functions, and where they
20 get their money from, all of the committees in this
21 indictment. Do you understand?

22 A. I understand. The answer is I picked -- I was picking
23 those folders who included the projects, board members, and
24 support from the outside. For example, students, low grade
25 students I didn't take, because there were several folders of

1 grades in school, I mean, that I didn't take. Also there were
2 receipts from all kinds of like Pal Tel, the Palestinian
3 communication, paying bills. I didn't take them. It was not
4 of my interest. So I cannot say that I took everything. I
5 took what I thought is connecting to, first of all, projects,
6 who are the members, who are -- what is the network that they
7 are talking about and the outside network. But I didn't take
8 every document.

9 Q. And you made choices along the way of the documents you
10 thought were important. Correct? You made the choices of
11 which ones to give the Prosecution and which ones not to give?

12 A. Not exactly. These folders that I just mentioned that I
13 did take that dealt with the network, I gave it in the
14 binders.

15 Q. Right. All I am asking -- This is not a trick. Are you
16 the person who went through all the documents and decided what
17 to give to the Prosecutors? Was that you or someone else?

18 A. No, it was me. But it is not kind of a decision that I
19 have -- For example, I have many boxes of documents, let's
20 say, and what I did with the Prosecution, in 2005 they came
21 and just copied everything, just gave it as it is, what I had,
22 what I choose.

23 Q. What you had chosen. That is all I am asking.

24 A. Okay.

25 Q. That is all.

1 A. The subjects that I choose, not the specific documents.
2 For example, I didn't take -- I think it is important to
3 explain it. If there was -- They had, for example, they, I
4 mean the committees, had folders dealing with foreign
5 relations. Okay? Correspondence with other -- This was the
6 subject. I didn't pick documents from these folders. I just
7 took the folder as it is and copied it, and that is what I
8 gave to the Prosecution.

9 Q. Okay. I think you have answered my question.

10 A. Okay.

11 Q. You were the one who made the decisions about what to
12 give them. That is all I was asking. Correct? Is that
13 correct?

14 A. The answer I gave, this is what is correct, yes.

15 MS. HOLLANDER: Do you have some more questions?
16 Can he ask some more, because he has read some different
17 documents, Your Honor?

18 THE COURT: Yes.

19 Q. (BY MR. DRATEL) It is still good morning. Just to
20 clarify the documents that we are talking about --

21 MR. DRATEL: May I approach, Your Honor?

22 THE COURT: Yes.

23 Q. (BY MR. DRATEL) And I think you might have kept the
24 Hebrew from yesterday. I don't know that I took back the
25 Hebrew from you of these documents. Right? Just take a

1 look -- Assuming that this is correct --

2 A. Okay.

3 Q. I just want -- That is the inspections you are talking
4 about. Right? From '92 to '93. Right?

5 A. Okay. I didn't review the translation, but obviously --

6 Q. I think it is an FBI translation, I was told yesterday by
7 Ms. Shapiro. It is what we are stuck with. But we have the
8 Hebrew, and we can print it out and make it part of the
9 record.

10 MR. DRATEL: What I want to do is perhaps designate
11 this as Court Exhibit Avi No. 1, and the Hebrew will be Avi
12 1-H?

13 THE COURT: Okay.

14 Q. (BY MR. DRATEL) Those are the inspections. We got it on
15 a disk from the Government. The Government can make sure it
16 is complete and it is what they gave us. But those are the
17 documents. I am not going to take the time to do it. This is
18 really a legal matter as to what is in there or not in there.
19 I just want to make sure that we know what documents we are
20 talking about.

21 A. I am relying on the Hebrew version.

22 Q. I understand.

23 A. This is the original.

24 Q. Okay. And this is what you call your summary. Right?

25 A. Correct.

1 Q. And this is dated October 13th, 2008?

2 A. Correct.

3 Q. If you want to look. Right?

4 A. Correct.

5 Q. And this is the summary. But this doesn't have any
6 primary documents in it. It is just your work quoting and
7 citing and charts at the end of people. Right?

8 A. I am not sure.

9 Q. It doesn't have an appendix of actual documents. This is
10 all something that you have prepared. You quote from
11 documents, you cite documents, but it doesn't have any stuff
12 from the zakat committees themselves in terms of --

13 A. Not true.

14 Q. You have little pictures. Right? But you don't have the
15 documents.

16 A. No, I have. And if talking about the proceeding that was
17 taken last year, I gave the documents.

18 Q. What I am saying is you have -- For example, we are going
19 to look at page 240. You have like a little photostat of the
20 document in there?

21 A. Correct. This document was attached last year in the
22 same book.

23 Q. Again, this is not a trick.

24 A. I know.

25 Q. It is just to determine what is in here.

1 A. I think we both know that -- Just a second.

2 Q. No, no, no. I understand where you are going, and I will
3 be happy to assist.

4 THE COURT: Let him finish. I think he is still
5 trying to finish. Was there something you wanted to say?

6 THE WITNESS: Before the trial the Prosecution asked
7 me -- Before this trial and the last trial, I think I can
8 mention it now.

9 THE COURT: Yes.

10 THE WITNESS: The Prosecution asked me every
11 document that I am relying on. Okay? So they say this is
12 called *Jencks*, a word that I think we have a similar -- And I
13 gave these binders and additional material to the Prosecution
14 already last year. And he showed me a document, for example,
15 that I handed over. I just gave it to the Prosecution as
16 *Jencks*. But many of them were also already included in the
17 binders, in the 19 binders. Okay?

18 Q. (BY MR. DRATEL) I am not talking about the binders now.

19 A. But if you look in the binders so I can find you the
20 document. It may be there two or three or four times. You
21 just have to compare it.

22 Q. I just am asking you about this document. I am not
23 saying that they are not somewhere else. I am just asking you
24 about this document.

25 A. Okay.

1 MR. DRATEL: And I would like to designate this as
2 Avi No. 2, which is called "The charity branch of Hamas
3 organization structure. Function and significance for Hamas."
4 And it said "reviewed by Avi, legal advisor. ISACT Division."

5 Q. (BY MR. DRATEL) That is you. Right?

6 A. Correct.

7 Q. And it is dated October 13th, 2008?

8 THE COURT: This is what you were referring to as
9 the summary earlier?

10 MR. DRATEL: Yes, the summary.

11 THE COURT: All right.

12 Q. (BY MR. DRATEL) So just so we are clear, what we are
13 talking about, that is the summary, and the inspections are
14 the other document we talked about a few minutes ago. Right?

15 A. Correct.

16 MR. DRATEL: That is all I have, Your Honor. Thank
17 you.

18 And I will provide a copy to the Court of these so that
19 the record is complete.

20 THE COURT: You want those to be made a part of the
21 record?

22 MR. DRATEL: Yes, I do.

23 THE COURT: Any other counsel?

24 MS. MORENO: No questions, Your Honor.

25 MR. WESTFALL: Your Honor, I may have one.

1 THE COURT: Go ahead.

2 MR. WESTFALL: Never mind. I don't, Your Honor.

3 THE COURT: Ms. Cadeddu?

4 MS. CADEDDU: No, Your Honor.

5 THE COURT: Any questions you want to ask?

6 MS. SHAPIRO: I am trying to understand what the
7 issue is. I am not sure.

8 THE COURT: I think the issue is -- Do you want to
9 explain what the issue is? You can probably do it better than
10 I can, since it is your issue.

11 MS. HOLLANDER: The issue is very simply that there
12 are documents, a vast trove of documents --

13 THE COURT: Let's leave out the editorials. Let's
14 just get to the issues.

15 MS. HOLLANDER: And this witness made the choices
16 about which ones to bring and which ones not to. All I was
17 saying was there were a lot of them and we have some.

18 MR. DRATEL: And Your Honor --

19 THE COURT: Do you want to question about that?

20 MR. DRATEL: Your Honor, just so we don't have
21 to -- My point in putting those documents in, when he refers
22 to the inspections that were done, there is nothing in there
23 -- there is one list of Tulkarem, there is no list of any
24 other --

25 THE COURT: Well, we can get to that later. I am

1 still --

2 MR. DRATEL: I didn't want to waste time.

3 THE COURT: For the issue we don't need to go there.
4 But I think you can tell from the cross obviously there is
5 some issue as to whether they have been provided everything,
6 and then another issue as to -- for some of the testimony that
7 he gave about the elections, that that is nowhere in the
8 documents, at least that they have been provided.

9 MS. SHAPIRO: Okay. Let me try. I think about what
10 the Prosecution provided, that is something I think that
11 counsel -- that I am happy to make representations to. I am
12 not sure --

13 THE COURT: Right. You can state what you provided,
14 but in terms of what was provided to you.

15 MS. SHAPIRO: Let me take a crack at it.

16 Q. (BY MS. SHAPIRO) I think you mentioned that the
17 Prosecution asked you -- Let me start backward. In 2005 did
18 you meet with the Prosecution team that is here today?

19 A. Correct.

20 Q. And did you provide us with approximately 8,000 pages of
21 material collected, between 19 and 21 binders depending on how
22 you count them?

23 A. Correct.

24 Q. They were in black loose-leaf binders?

25 A. Correct.

1 Q. Okay. And it was represented to you by the Prosecution
2 team that we intended to turn all of that material over to the
3 Defense. Correct?

4 A. Correct.

5 Q. In fact, we asked permission about whether the government
6 of Israel objected to the production of any of that material.

7 A. Correct.

8 Q. And that was material that was culled from Operation
9 Defensive Shield and subsequent operations. Right?

10 A. Correct.

11 Q. And you didn't yourself make any determinations about
12 what was relevant to this case. You simply provided
13 everything on subject matters that were found in the
14 committees that we were interested in. Is that right?

15 A. During my work, I concentrated on the charities, the
16 social branch of Hamas, and there are obviously subjects like
17 the administrative folders that are not part of my interest.
18 It doesn't matter to me who pays the electricity bills, the
19 phone bills, whatever. I don't take them. And it is true
20 that I didn't take those kinds of documents.

21 But when for my work it was important, and this criteria
22 that I was speaking, so when I was speaking of supporting
23 orphans or special segments -- By the way, not only special
24 segments. There were in many these binders, there are many
25 documents that --

1 Q. Here is the point I am getting at.

2 A. And what I had, what I took is what I --

3 Q. I understand.

4 A. -- I handed over.

5 Q. I understand. Let me see if I can make you understand
6 this distinction. When you collected the documents from
7 Operation Defensive Shield, you weren't selecting them for the
8 Prosecution. In fact, you had them collected before you ever
9 met the Prosecution team here. Is that right?

10 A. Definitely. You are definitely correct.

11 Q. Okay. So what you had is what you took out from all of
12 these documents for your own work in your own research. Is
13 that right?

14 A. That is absolutely right.

15 Q. Okay. And then when you were introduced to the
16 Prosecution team, you simply turned it all over to the
17 Prosecution.

18 A. All I had I turned it over without any distinction
19 whether a specific document is helping to the Prosecution or
20 not helping to the Prosecution. I just gave it everything I
21 had. This consideration was not mine. I just took it as it
22 is and say, "You look at this. You choose what" -- I mean,
23 this is your decision what to use and what you want to. It
24 was not my decision. And when you decided to use a document
25 as evidence --

1 Q. I understand. And the Government didn't task you on its
2 behalf to go back to the original collection and search for
3 something specific. Right?

4 A. Absolutely not. What I had is what I gave you. And
5 after that when there was -- there were new binders that I got
6 filled with letters of the Holy Land Foundation, I gave it
7 over. That is exactly without any --

8 Q. Right. I understand.

9 A. No, but it should be written.

10 Q. I think it is clear.

11 MS. SHAPIRO: Just a moment, Your Honor.

12 Q. (BY MS. SHAPIRO) I am going to clear up one more issue
13 because my colleague is confused, which means everybody is
14 probably confused.

15 The binders came from Operation Defensive Shield and the
16 later operations. Correct?

17 A. Correct.

18 Q. Now, the material that Mr. Dratel marked as Avi No. 1, I
19 believe, those did not come from Operation Defensive Shield?

20 A. The summaries?

21 Q. No, the reports from --

22 A. No, it is not from Defensive Shield.

23 Q. Inspections.

24 THE COURT: That is what we have been referring to
25 as inspections.

1 Q. (BY MS. SHAPIRO) I will refer to the reports they had a
2 seal on them. Right? Those were not from Operation Defensive
3 Shield?

4 A. No.

5 Q. What kind of documents were those? Where did they come
6 from?

7 A. These documents are documents that were received by the
8 Civil Administration. These are reports that the Civil
9 Administration sent to several, I assume several security
10 agencies including the ISA.

11 Q. So those documents were maintained at the ISA?

12 A. Yes.

13 Q. What we are calling the inspections?

14 A. Yes.

15 Q. Okay. And you provided them to the Government prior to
16 your testimony this year because you relied on them. You
17 looked at them.

18 A. I relied, and as soon as I -- After last year when I was
19 asked some questions, I wanted to make it more clear what I am
20 saying, so I was reviewing this kind of material inspections
21 that were conducted in these years. And when I find it as it
22 is, I just handed it over.

23 Q. You gave it to the Prosecution for us to provide to --

24 A. And I didn't --

25 Q. I understand. Nobody is accuses you of anything.

1 A. I just --

2 THE COURT: He wants it on the record. Let him
3 state his position.

4 THE WITNESS: I didn't focus in something like
5 finding only ammunition and not phone numbers or phone
6 records. I just gave it as it is.

7 I must say something. As a legal advisor also, not as an
8 expert, I am aware of the fact that material that is related
9 to a trial must be handed to the Prosecution. This is
10 something that I am -- This is my daily practice. And we are
11 not -- There is no gaming here, no fooling around. What I am
12 relying on is going to the Prosecution without any -- How do
13 you say? Sorting. Without sorting and deciding. That is it.

14 Q. (BY MS. SHAPIRO) Okay. So what you relied on with
15 respect to those inspections you gave to the Government and
16 the Government gave it to the Defense?

17 A. This is not my --

18 THE COURT: Did you turn over all of the inspection
19 records that you have?

20 THE WITNESS: Yes.

21 THE COURT: That is what I understood you to say.
22 So all of the inspection records that you had, you turned over
23 to the Government?

24 THE WITNESS: Absolutely.

25 THE COURT: All right. And then you turned that

1 over to the Defense?

2 MS. SHAPIRO: Yes.

3 THE COURT: Any other questions?

4 MR. DRATEL: I have just a couple, Your Honor.

5 MS. SHAPIRO: Just a moment, Your Honor, just to
6 check with my colleagues.

7 Nothing.

8 THE COURT: Okay.

9 Mr. Dratel?

10 Q. (BY MR. DRATEL) You testified when the jury was here
11 that there was a photo of Yasser Arafat found among the
12 documents at the zakat committees. Did you turn that over to
13 the Government? Did you give that to the Prosecution?

14 A. I testified that --

15 Q. Did you give that photograph to the -- Was that among the
16 things that you gave to the Government? Was it in the
17 binders? I am just asking a simple yes or no question.

18 THE COURT: Counsel, stop arguing. This is a
19 hearing outside the presence of the jury. Stop arguing, let
20 him testify, and we can go from here. Make it easier.

21 THE WITNESS: I will make it clear. I review 200
22 posters in boxes that not necessarily relate to committees
23 that are part of this trial, and the reason I review, I wanted
24 to see some -- I wanted to look in my eyes and to be impressed
25 of what was found not only on specific zakat committees, but I

1 reviewed those 200 posters and including this poster of Yasser
2 Arafat, and it is not one of the committees here, and I didn't
3 take it from the Army. I left them there. I am not using
4 them.

5 And I didn't hand it over to the Defense because I didn't
6 have possession. For me it was just an impression. I wanted
7 to look and to see whether there is something that I can
8 conclude. It was a method, let's say something that I wanted
9 to be impressed. That is the whole idea.

10 Q. (BY MR. DRATEL) Now, the inspections that you provided,
11 though, that is beyond what is in this indictment. Right?
12 There are mosques in Shechem and --

13 A. Exactly. These mosques that belong to the zakat
14 committees that controlled and the emams are appointed by
15 specific persons in the zakat committees.

16 Q. But the other materials --

17 MS. SHAPIRO: Your Honor, Mr. Dratel, I just want to
18 understand if the purpose here is a search for facts right
19 now. This isn't argument, and what I am hearing is argument,
20 and I don't think there is any point to it in this setting.
21 We are here to understand what he has and what he didn't have.

22 MR. DRATEL: I am asking him -- he testified about
23 the Yasser Arafat poster, and I am --

24 THE COURT: And he explained it.

25 Q. (BY MR. DRATEL) And your role in the beginning of this

1 process in 2000 was to prepare for prosecutions. Right?

2 A. 2000?

3 Q. Yes. The Raed Saleh --

4 A. Right, yes.

5 Q. Right? And that is what you do at ISA is you also
6 prepare for prosecutions in that regard.

7 A. From the end of 2000?

8 Q. Yes.

9 A. As I said we started to -- The investigation formally
10 started --

11 Q. I don't mean Raed Saleh.

12 A. I don't understand the question.

13 Q. Let me rephrase it. In your job when you were working on
14 this material, not the legal advisor part but this particular
15 part of what you do, you assist in the preparation of
16 prosecutions.

17 A. Correct.

18 MR. DRATEL: Nothing further, Your Honor.

19 THE COURT: Ms. Hollander any questions?

20 MS. HOLLANDER: No, I think those are my questions.

21 MR. WESTFALL: May I briefly?

22 THE COURT: Mr. Westfall?

23 Q. (BY MR. WESTFALL) Yesterday when you and I were
24 speaking, you talked about orphan applications, like thousands
25 of orphan applications that had been seized during Operation

1 Defensive Shield.

2 A. I didn't say thousands.

3 MS. SHAPIRO: I just object to him going now into
4 Holy Land documents.

5 THE COURT: Let's see where he is going. I am not
6 sure where he is going.

7 Q. (BY MR. WESTFALL) Seized from the zakat committees, the
8 orphan applications seized from the zakat committees. And all
9 of the zakat committees I think you agreed that it would add
10 up to thousands of orphan applications. Do you remember that?

11 A. I am not sure that the IDF took all the material from the
12 zakat committee. If you imply that I had thousands of orphan
13 applications, that is not true. I don't. What I had are
14 lists. The lists are part of the binders.

15 Q. Who made the lists?

16 A. The zakat committees.

17 Q. Who brought the orphan applications that we saw?

18 A. These orphan applications were part of the IDF searches.
19 What they had, that is what I got.

20 Q. But there was more than three orphan applications at the
21 Qalqilya zakat committee. Where are the other ones? Did you
22 include those in the 19 to 21 binders?

23 A. What I had is included in the 19 binders. It doesn't
24 necessarily that I -- For example, I don't remember
25 specifically. What I had in Qalqilya is in Qalqilya.

1 But from the al-Tadamoun, for example, the Prosecution
2 showed three files. There are more, I think 40. They didn't
3 show all the 40, even though there are many cases there that
4 can be discussed. What I have I handed over. That is it.

5 And it doesn't necessarily -- If you think that there
6 were dozens of orphan applications, by the way, you can see
7 the list, and maybe you will find the list, and if you review
8 the list you will find those thousands that you claim, but I
9 don't know whether the IDF in this operation took all the
10 applications. But what I had in my possession was handed to
11 the Prosecution.

12 Q. The IDF didn't destroy the records. They put them in the
13 warehouse. Right?

14 A. I am not sure that the question is for me. You asked me
15 what the IDF did during the searches?

16 Q. What they did with the records, I thought they were in a
17 big warehouse at Dar El or something like that?

18 MS. SHAPIRO: Your Honor, he is right. This is the
19 wrong witness to ask. He is not with the IDF.

20 Q. (BY MR. WESTFALL) You mentioned there were grade reports
21 that you looked at but didn't include in the materials?

22 A. What reports?

23 Q. You said something about student grade reports.

24 A. I said there were also -- Yes, I said that there were
25 also folders of grades, students doing fine, this student is

1 doing not fine. I don't think that this -- My opinion was
2 that this binder, this specific folder is not of my interest
3 because it is a fact that they have schools and they have
4 grades.

5 Q. Right.

6 A. And the specific grade of each student is not part
7 of -- I think is not something that I can build my opinion and
8 my expertise.

9 Q. And these specific grades of these specific students were
10 in the kindergartens in the zakat committees. Right?

11 A. What do you mean kindergartens?

12 Q. These grade reports were taken from the zakat committees.

13 A. I saw folders that were taken from several zakat
14 committees. I am not sure that all the students were there.
15 I am not sure -- I don't know to tell you whether all the
16 folders were taken from there. I saw several of these. Some
17 of them even relate to the committees that we are talking
18 about. That is true. But I didn't take them into my
19 possession because this was not my interest. The specific
20 interest of grades, electricity bills, and phone bills was of
21 not my interest. It couldn't promote me to anywhere because
22 there was no argument that these kids are having education.

23 Q. So can we say that that right there what you just said is
24 kind of the guide that you used in what you included and what
25 you didn't, because you didn't include the grade? And I am

1 wondering about your decision. And what I am hearing from you
2 is that it wasn't relevant really to why you were putting the
3 materials together. Is that fair?

4 A. This is a very long sentence that I would simplify. I
5 took what is relevant to the subject that I wrote. Okay?

6 Q. And the stuff that wasn't relevant you left out.

7 A. By the way, if you find -- maybe you will find
8 other -- if you look at the binders you will find grades.

9 Q. And the stuff that wasn't relevant you left out?

10 A. I thought, and my opinion is still, that the subject of
11 the grades is not of interest to my subject of searching and
12 researching. Of course, you can disagree with me, but this is
13 my opinion and it is still my opinion.

14 THE COURT: I don't think he is trying to argue with
15 you. He is just trying to determine what you left behind and
16 what you took.

17 THE WITNESS: Okay. This is -- I think, Your Honor,
18 that I have said it in the first sentence. I left it behind.

19 THE COURT: All right.

20 Q. (BY MR. WESTFALL) Okay. Then in the category of left it
21 behind, that is where I want to be. Okay? The other orphan
22 applications from all of the other committees, those were left
23 behind. Right?

24 A. I didn't say that.

25 Q. Okay. What did you do with those?

1 A. I didn't say that.

2 Q. Then tell us what you did with those.

3 A. The application that I had, you have it in the 19, 20
4 binders --

5 THE COURT: Counsel, he has said that repeatedly;
6 that you have what he said. He said IDF might have had some
7 and he doesn't know what the IDF might have done with those.
8 He has answered that. You have been hung on these orphan
9 applications and he has already answered that.

10 Q. (BY MR. WESTFALL) Then what other things did you look at
11 and make the decision should not be included in your binders?

12 A. That is, so far as I remember, I don't -- Let me think if
13 any other subject -- You are saying subjects that are
14 excluded?

15 Q. From your binders. Right. What things did you not
16 include in there?

17 A. As I said, grades, bills, correspondence with the
18 suppliers, suppliers like gas, receipts that they paid to
19 suppliers like paper, these kind of things, paper for office,
20 chairs, that was not of my interest so I kept it behind.

21 Q. I guess there would have been photographs and such. We
22 already know about Arafat. Right? Arafat wasn't included in
23 there, that picture of Arafat wasn't included in there.

24 THE COURT: That picture from Arafat, you said that
25 was a committee that wasn't related --

1 THE WITNESS: That was not related to this case.

2 Q. (BY MR. WESTFALL) And so it is not a committee that the
3 Holy Land Foundation ever did business with?

4 A. I don't know. The committee was Beit Zahul. I don't
5 know whether this was part of the indictment or not.

6 Q. Okay.

7 MS. SHAPIRO: I don't want to make argument, but I
8 mean, I feel like we are spinning our wheels.

9 THE COURT: We are, to a certain extent. I am going
10 to give a little bit of latitude, but we are on a fishing
11 expedition.

12 Q. (BY MR. WESTFALL) There was 200 boxes you said of stuff
13 that didn't necessarily pertain to the trial that is not in
14 the binders?

15 A. 200 posters.

16 Q. Posters.

17 A. Yes.

18 Q. Okay. I misunderstood that. The original reason you put
19 these binders together, what was that?

20 A. What do you mean binder?

21 Q. The binders, the 19 to 21 binders, why did you originally
22 put those together?

23 A. We spoke just a few minutes ago about a meeting I had in
24 2005. The Prosecution asked me for all the material that I
25 have and that is what I did.

1 Q. It sounded like they were already put together by 2005.
2 I am wondering why you originally put them together.

3 A. What do you mean together?

4 MS. SHAPIRO: Your Honor, one, it is asked and
5 answered. He explained how and why he selected these
6 documents. We are just encountering language and semantic
7 issues.

8 MR. WESTFALL: And Josh just advised me of that, too
9 so I am going to leave that alone.

10 Q. (BY MR. WESTFALL) Once you were told your materials were
11 going to be turned over to the Defense, did you pull anything
12 out of them?

13 A. Did I pull --

14 Q. Did you remove any documents from them once you were told
15 they were going to be turned over to the Defense?

16 A. I think this question is -- The Prosecution team took the
17 material in the last day of their visit. At that time they
18 didn't even tell me that they were going to use it for the
19 trial. So if I wanted to take out some document, I should
20 have -- There were a lot --

21 Q. So no?

22 A. That, of course, is no.

23 Q. Very well.

24 MR. WESTFALL: Thank you, Your Honor.

25 THE COURT: Ms. Shapiro, anything else?

1 MS. SHAPIRO: I don't have any questions of the
2 witness, but I am happy to argue.

3 THE COURT: We will get to that.

4 MS. HOLLANDER: Can I ask one question?

5 THE COURT: Yes, one question.

6 MS. HOLLANDER: I hope it is one.

7 THE COURT: It will be one question. I am not going
8 to let this keep going on.

9 Q. (BY MS. HOLLANDER) It is my understanding that the zakat
10 committees write receipts for the money that they pay orphans
11 and families, and I am assuming that you did not consider
12 those receipts necessary to turn over to the Prosecution. Is
13 that correct?

14 A. Absolutely not correct, and that is not what I said. If
15 you look in the binders you will find receipts, lists,
16 signatures, and if you want to bring me the binders here I
17 will look for you.

18 Q. All I am trying to find out is -- I thought you said that
19 you didn't include the administration receipts.

20 A. I didn't say that. I said what I had, including lists,
21 receipts. Whatever I had that is what I give. And I didn't
22 say it is not of my interest.

23 Q. You are answering questions that I am not asking. All I
24 am asking you is a simple question. The zakat committees
25 write a receipt every time they give money, for example, \$85 a

1 month to an orphan. Did you include all of those receipts
2 that you found in the documents that were seized? Did you
3 turn over all of those receipts to the Prosecution?

4 A. In one of the inspections of the Jenin zakat committee
5 they were told that not all the receipts are there and they
6 are missing some receipts. It was inspection of the PA.

7 Now, you are asking me something that I cannot even prove
8 to you because they didn't write any -- I am not sure that
9 they wrote receipts to every orphan. So what I had I have
10 given. That is what I am saying.

11 Q. Okay. So you gave them every receipt that was seized
12 from every --

13 A. No, I didn't say that.

14 THE COURT: That is not what he said, counsel. You
15 have twisted this thing around ever since you started. That
16 is the reason I had a problem with you getting up here.

17 MS. HOLLANDER: I don't understand what he is
18 saying.

19 THE COURT: Of course not, because you keep twisting
20 it around. You have misconstrued what he said. You have
21 assumed -- You want him to assume that there were these
22 receipts. He has never said that there were receipts for
23 orphans. But you are starting off with that assumption. He
24 has never said that. He was talking about receipts for bills
25 and suppliers. Did I understand you? That is the receipt he

1 is was talking about.

2 THE WITNESS: That is correct.

3 THE COURT: He didn't say there were receipts for
4 orphans. You assumed that, and then asked if he turned that
5 over. How about asking him if he ever saw any of those? You
6 are assuming it and you have twisted what he said all around,
7 and that is why he doesn't want to answer what you are asking.

8 MS. HOLLANDER: I am sorry. I was trying to make it
9 easier.

10 THE COURT: You are not making it easier. That is
11 the problem. You are assuming that certain things are
12 happening, and that is where you are going instead of trying
13 to find out what really happened.

14 Go ahead.

15 Q. (BY MS. HOLLANDER) Did you see in the documents that
16 were seized receipts from -- any receipts from the zakat
17 committee that they wrote that showed the money they gave to
18 orphans and families?

19 A. Actually I have to review the binders, because all the
20 material is there, but I am sure that one receipt, if I
21 remember correct, and this is a receipt from the Jenin zakat
22 committee supporting one of -- a person named Raed Kilani, and
23 that is one of the operatives the Izz el-Din al-Qassam and
24 there was a receipt. But I am not saying that -- This
25 happened to be something that I remember, but I think there

1 are more receipts. What I took from the Army, from the
2 possession of the Army included lists of orphans and not all
3 of them --

4 THE COURT: Mr. Avi, what she is asking, though, do
5 you remember leaving behind -- that you didn't get from the
6 Army any receipts that had to do with orphans?

7 THE WITNESS: No. That is what I am saying.

8 THE COURT: I don't know what her question is, but I
9 think that is where you were trying to get.

10 THE WITNESS: I will make it more clear. I took
11 what they called orphan folders. Orphan folders, I took them.

12 Q. (BY MS. HOLLANDER) Okay. You took all the orphan
13 folders you found from the zakat committees in this
14 indictment, or that have been mentioned here?

15 A. I didn't say that. I say when there was orphan folders I
16 took it. That is what I am saying. Maybe the --

17 Q. No. It --

18 A. I will tell you where you are wrong. Because when you
19 are assuming that in the Nablus zakat committee there was
20 orphan folders --

21 Q. All I am asking you --

22 A. Maybe there was not even -- it was not taken. I am --
23 just for the argument, maybe there was not orphan folders, so
24 I didn't take it if there were not. But if there was, like in
25 Jenin, for example, I remember correct there were many lists,

1 I took it because it was one of my interests.

2 Q. So to make this really clear, we don't know what the
3 zakat committees -- everything that they had, and we don't
4 know what --

5 A. If they had.

6 Q. If they had. And we don't know --

7 MS. SHAPIRO: Your Honor, I object.

8 THE COURT: Sustained. We have been over and over
9 this, counsel. Sustained.

10 MS. HOLLANDER: I don't have anything else.

11 THE COURT: Any other questions you wanted to ask?

12 MS. SHAPIRO: No.

13 THE COURT: All right.

14 Mr. Avi, you may step down. You are free to go. Thank
15 you.

16 Did you want to argue on any of the issues, or is this
17 something we need to take up?

18 MS. HOLLANDER: It is something we actually need to
19 take up ex parte.

20 MR. DRATEL: Your Honor, all I would ask, and I am
21 making part of the record and the Court is going to look at
22 them, because with respect to the inspections, what he claimed
23 in his testimony in the inspections just isn't there.

24 Thank you.

25 MS. SHAPIRO: Your Honor, I just -- I found all of

1 this colloquy very frustrating. We turned over everything
2 that we received to the Defense. We turned over more than we
3 are legally required to turn over. He does not need to turn
4 over, and no expert needs to turn over under Rule 16
5 everything that expert has ever seen in his entire career and
6 research. We had him turn over what he relied on to form his
7 opinion. I tried to make this clear with him, with these
8 Defensive Shield materials, he gathered materials prior to
9 there ever being this prosecution. He went and gathered these
10 materials for his own research, and then everything that he
11 gathered that was relevant to him for his own research well
12 before this prosecution, he turned it all over and we turned
13 it all over to them. And I just don't understand, you know,
14 what the issue is here. We turned over --

15 THE COURT: Well, there is two issues. One is what
16 Mr. Dratel is bringing up, that as part of those documents
17 that you turned over, what he said came from there he says
18 isn't there. Of course I don't have the documents. You do.
19 But that is one of the issues.

20 MS. SHAPIRO: But even if he relied on other
21 materials that were outside of those documents, I guess my
22 point is that he doesn't have to bring or give to the
23 Prosecution every single thing he has ever looked at. They
24 asked him questions -- He might have drawn on information that
25 he knows from his research in the many years that he spent

1 investigating these committees. But that doesn't mean that it
2 all had to have been turned over to the Prosecution.

3 THE COURT: You are telling me that you turned over
4 what you had.

5 MS. SHAPIRO: Right. Exactly. For his direct we
6 asked "Everything that you relied on, give it to us and we are
7 going to turn it over."

8 THE COURT: And then the other issue they are
9 interested in, of course, is what wasn't turned over.

10 MS. SHAPIRO: That issue I do want to say something
11 about, Your Honor. That issue really goes to whether they
12 have a right to go to look at the Defensive Shield material.
13 That is separate and apart from this witness. And I just want
14 to point out that very, very early on in this case, and we
15 have a letter to show it, I believe Mr. Jonas sent a letter to
16 the Defense and said that if they want to go there, I think
17 the request was for us to do an MLAT or assist them in getting
18 to look at those materials. And we responded with a letter
19 saying that under the treaty we can't use the MLAT process,
20 and they would need to do a letter rogatory, and they never
21 did that. The first time they did that was after the first
22 trial and I don't remember how long before the second trial,
23 but it was a request to Your Honor, not even a request to
24 Judge Fish.

25 So for them to come in now at this juncture and say, "We

1 have to go see those materials," when they just didn't go
2 through the right process all the way around I think it is
3 just too late.

4 MR. DRATEL: Your Honor, with respect to the expert
5 part of it, it is more complicated than that. What we have is
6 items coming in as substantive evidence from another witness
7 and this witness together from seizures. If this case was a
8 domestic case and the Government went to a house and received
9 100 items, we would get those hundred items. Out of the
10 hundred items, they want to put 20 in evidence.

11 THE COURT: That is not true, because they have
12 given you everything, not just what they put in evidence.

13 MR. DRATEL: But they haven't given us everything
14 that is seized.

15 THE COURT: No, but that is not what you are saying,
16 counsel. You are saying that if they introduce 20 items of
17 evidence, that is all you get to see is 20 items of evidence.
18 It is in between that.

19 MR. DRATEL: I agree, yes.

20 THE COURT: I understand that, but that is the
21 issue. I know that is the issue.

22 MR. DRATEL: Yes. Okay. Thank you, Your Honor.

23 MS. SHAPIRO: If I may just make a final point. It
24 wasn't the U.S. government that seized these documents.

25 THE COURT: Right. And that has been the whole

1 problem over this case to begin with. It wasn't the U.S.
2 government who seized it, otherwise you would have access and
3 we wouldn't be going through this. We have been having to
4 deal with this.

5 The issue of the letters rogatory was brought up, but it
6 was late in the process. And I explained already I thought it
7 was tied in with the request for funding, and so I was waiting
8 for that. And of course that didn't happen until August, and
9 then it wasn't brought up again until sometime after we
10 started the trial that it was brought to my attention, or
11 somewhere in there, that that was still a pending motion. I
12 thought that was a moot issue because of the funding request
13 that it was tied in with.

14 I still have a concern -- I am not convinced that it is
15 not anything other than a fishing expedition. I know you
16 think there is something there, but based on what has been
17 stated here, I don't know that there is anything there that
18 would warrant authorizing a fishing expedition. We will have
19 to discuss these other issues, the funding issues. But that
20 is what it looks like to me. I know you don't know what is
21 there and you don't want to believe that, but from where I sit
22 and trying to look at it objectively, I don't see anything
23 there that strikes me as something that you just -- it would
24 be important to your case.

25 MS. HOLLANDER: I think part of the problem is we

1 don't know. He is developing --

2 THE COURT: We do know to a certain extent, and that
3 is why you were asking him that. And I was going to ask him
4 that, but Mr. Westfall got there. That is why I let him go on
5 with that, because I know that is important. I know you are
6 interested in what he didn't turn over and what he didn't get,
7 and Mr. Westfall asked him that. You know, you heard what he
8 said on that.

9 If you can make something out of that that would be
10 material, I would be glad to hear it and we can talk about it,
11 you know, as far as the CJA issue, but from what I heard --

12 MS. HOLLANDER: Well, it is hard to -- It is
13 difficult to know, frankly, I think from his answers because
14 -- and that is why when I said I was assuming something, it is
15 because based on something that I knew.

16 THE COURT: Well, based on something that maybe you
17 have been told. I don't know how you know what is over there
18 or not over there.

19 MS. HOLLANDER: I can explain that at another time.
20 But the point is that we don't have access to -- We have not
21 been --

22 THE COURT: I understand all that, counsel. And the
23 issue is whether we should authorize you to go over there. I
24 understand that.

25 MS. HOLLANDER: Or had we had access to -- we even

1 now know there was an index that was provided to Doctor
2 Levitt, and we didn't have access.

3 THE COURT: But he also testified that that index
4 was just -- it didn't play a role in anything.

5 MS. HOLLANDER: It is important to us to what is
6 there and what isn't there.

7 THE COURT: Maybe; maybe not. I know you think it
8 is, but maybe; maybe not. We don't know that.

9 MS. HOLLANDER: You are right. But I think the most
10 telling --

11 THE COURT: He said he didn't rely on it; that it
12 just played zero or no part in his opinions and his testimony,
13 so I didn't see any basis for making that available.

14 MS. HOLLANDER: Well, but I think the most telling
15 thing this witness said, in my view, was that he picked what
16 he thought was relevant.

17 THE COURT: That is not what he said. That is just
18 not what he said. And that is why -- And that is why you have
19 to look at the rest of it. There was some selection, but it
20 was broader than that. You are acting like he was just
21 picking and choosing and he is leaving behind all this
22 valuable information. He described how that selection process
23 worked and how he went by subject, and once there was a
24 subject that it related to the subject he was interested in,
25 he took it all. There was no picking and choosing within

1 that.

2 And then Mr. Westfall asked him what he left behind, and
3 he described that, and it didn't seem to be a lot of picking
4 and choosing within the things that are relevant in this
5 particular case, that I heard in terms of all of that. So I
6 heard that and I knew where you were going, but I also heard
7 Mr. Westfall's cross plus what he was already saying.

8 I don't think it is the kind of selecting that you want
9 to make it out to be, counsel. That is where I disagree with
10 you. You have your arguments on the record, but I disagree
11 with you that it is that kind of selectiveness involved. He
12 explained it, the record is clear, and so that is where I am
13 on that.

14 We will be in recess. Anything we need to take up Monday
15 morning before we start with this -- Who is the witness?

16 MR. DRATEL: Esposito.

17 THE COURT: That is right. And I do have your
18 motion.

19 MR. JACKS: And if there are going to be any
20 exhibits introduced through him.

21 THE COURT: Do you anticipate any?

22 MS. HOLLANDER: It is my witness, Your Honor. At
23 this point the only exhibits I have are Government exhibits,
24 and that are in evidence. And if that changes -- I am going
25 to be working on this tomorrow, and I will send you anything

1 else, but I don't anticipate anything else.

2 MR. JACKS: And then, Your Honor, there may be some
3 areas of his testimony that I am going to object to on grounds
4 of relevancy, and I will be preparing that and I will email it
5 to the parties and the Court.

6 THE COURT: Okay. Then why don't -- Let's plan on
7 being here at 8:45, and we will address that. You are not
8 challenging his credentials? Are you challenging his
9 credentials?

10 MR. JACKS: I don't think so, Your Honor, in terms
11 of -- Again, it relates to the relevancy of what he is
12 testifying to. But as far as, you know --

13 THE COURT: I think you stated yesterday there may
14 be some relevance to some of his testimony, but not all of it.

15 MR. JACKS: Yes, sir.

16 THE COURT: Okay. Then just let us know and then we
17 will be here at 8:45 and resolve it.

18 MS. SHAPIRO: Your Honor, could we just inquire as
19 to who is going to be after Mr. Esposito?

20 THE COURT: Do you have an idea?

21 MR. DRATEL: We haven't yet decided, but we will let
22 them know before.

23 THE COURT: And also let them know, of course, any
24 exhibits, if it is different than what is in evidence.

25 MS. MORENO: Of course.

1 THE COURT: And let them know so that he can do the
2 objections.

3 Have a good weekend. See you Monday.

4 (End of day.)

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1 I HEREBY CERTIFY THAT THE FOREGOING IS A
2 CORRECT TRANSCRIPT FROM THE RECORD OF
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE
6 COURT AND THE JUDICIAL CONFERENCE OF THE
7 UNITED STATES.

8
9 S/Shawn McRoberts

06/24/2009

10 _____DATE_____
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12 FEDERAL OFFICIAL COURT REPORTER
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